



REPORT
OF THE
LIQUOR CONTROL COMMITTEE

APPOINTED BY
The Governor of the Commonwealth of Kentucky
TOGETHER WITH
A MINORITY REPORT
AND
DRAFTS OF TWO BILLS

THE KENTUCKY LIQUOR CONTROL COMMITTEE:

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PREFACE.

The Committee, appointed by Governor Laffoon, was called together for the first time on December 9, 1933. Since then it has held one public hearing and a half-dozen or so formal Committee sessions, several of which lasted through parts of two days and during part of the intervening night. There was not a day during the whole time (except perhaps Christmas day) when some member of the Committee was not engaged in work upon one or more of the different aspects of the problem before it.

In view of the importance of the subject, of the large volume of reports and bills from other States which were studied and of the peculiar, constitutional difficulty in Kentucky, the time consumed was, perhaps, too short for as thorough and careful study and drafting as would have been desirable. But whatever imperfections may be found in the two bills submitted, the reports represent the considered conclusions of those who have signed them.

I have written this brief preface in order to say on behalf of the other members of the Committee what they might hesitate to say for themselves. They have faithfully attended all called meetings of the Committee, despite the distance required to be travelled by several of them. They have given the closest attention to their task and all of them, whether of the minority or the majority, have been actuated by a common purpose to promote the welfare and prosperity of Kentucky. No difference of opinion as to methods has been allowed to distract their attention from that ultimate objective.

LAFON ALLEN, *Chairman.*

**Report of the
Kentucky Liquor Control Committee.**

*To the Governor and
The General Assembly of the
Commonwealth of Kentucky:*

Your Committee was charged with the duty of studying the conditions resulting from the repeal of the Eighteenth Amendment and of recommending legislation to meet those conditions.

If the Kentucky Constitution had not prohibited the manufacture and sale of intoxicating liquors, the task of the Committee would have been comparatively simple. Doubtless there would have been differences of opinion as to the general plan to be followed, as well as to details under the plan adopted. A choice would have been necessary between the licensing plan and the state monopoly plan, that is to say, between the plan of licensing private persons or companies to sell liquor, under governmental supervision, regulation and taxation, and the plan of selling through government stores. But the difficulty, if any, would have arisen merely from differences of opinion as to policy.

But, in view of the Seventh Amendment of the Kentucky Constitution, prohibiting the manufacture and sale of intoxicating liquors, except for certain, limited purposes, your Committee was confronted, not merely with a question of legislative policy, but with a question of legislative power. Unless the Seventh Amendment was to be ignored or slighted in some degree, the only legislation that could be recommended was such as was genuinely intended and designed to enforce the constitutional condemnation of the sale of liquor for beverage purposes.

If this course were followed, there was little or nothing for your Committee to do. There was already on the statute book an enforcement act (the Rash-Gullion Act, adopted March 22, 1922) and, at most, the Committee's task would have been to recommend changes in that Act, intended to make it more effective.

But your Committee has conceived that it was not appointed for any such limited and unpractical purpose. Kentucky had had more than a decade of experience, not only under the Rash-Gullion Act, but under the Volstead Act, from which it had learned that absolute prohibition, except in restricted areas and when

supported by a dominant public opinion, was not an effective method of dealing with the liquor problem, but, on the contrary, brought in its train evils greater, even, than those which it was intended to remove. That this was the prevailing opinion in Kentucky seemed to be sufficiently indicated by the majority of more than 152,000 given for the repeal of the Eighteenth Amendment in the election of November, 1933.

It is a matter of common knowledge that the Rash-Gullion Act has not been enforced in the urban centers of the state. Indictments were difficult to get and convictions almost impossible. Consequently, the state was infested with bootleggers and like gentry and suffered all the social ills and fiscal losses that are the inevitable accompaniment of a tolerated, outlaw trade. The results were corruption and crime, no revenue, no control, disrespect for law and general demoralization. The only competition with the bootlegger was supplied by the combination of the easy doctor and the easy druggist, who, in truth, were of the same genus.

evils
Your Committee was required to make a choice. If it should recommend the retention of the Rash-Gullion Act or some variation of it intended to enforce, rigidly and literally, the Seventh Amendment, it would merely invite a repetition of the old failure, thus leaving society a prey to the old evils. It is a grave responsibility to incur these certain calamities for the sake of a futile devotion to a futile decree.

Your Committee was unwilling to assume that responsibility. It recognized as a fact that there is widespread and insistent demand for liquor for beverage purposes. It is to supply this demand that the bootlegger exists and it is the fabulous profits of that trade that have enabled him to purchase the protection that is so indispensable to him and so injurious to society. For the corruption thus begun does not stop where it begins, but creeps like a canker until its moral corrosion is felt in every part and we have not merely the bootlegger, but the racketeer, the "high-jacker," the gunman, the gangster and all the crew of mercenary killers and kidnappers, recruited, commanded and paid by the "big shots" of this illicit traffic.

evils
Facing this situation, your Committee has been unwilling not to suggest some method of mitigating these evils, so far as it was possible to do so by law. We are willing to incur the accusation of infidelity to the letter of the Seventh Amendment in order to accomplish, in part at least, the underlying purpose of that Amend-

ment, which was to prevent intemperance in the use of alcoholic beverages.

Temperance must, in the nature of things, be chiefly the product of precept and example. So far as the law is concerned, there is only one way, in the present situation in Kentucky, in which it can help and that is by removing those inducements to excessive drinking which attend secret and illicit drinking. To do this it is necessary to bring the supply of liquor out into the daylight, where it can be properly restricted and watched and policed and taxed. — All excessive drinking cannot be prevented in this, or in any other, manner. But the greatest temptation to it can be thus removed, the opportunities for it can be diminished and the mercenary encouragement of it can be measurably prevented.

Your Committee was unanimously of the opinion that something of this kind should be done, but was divided as to the best method of doing it. It was in agreement as to the impossibility of recommending the establishment of government stores in view of the Seventh Amendment, even though it might be willing to make such a recommendation in other circumstances. But it could not agree unanimously upon the method of bringing the beverage liquor trade into the open, where it might be controlled and taxed.

The division in the Committee came about in this way. At one of its early meetings it had agreed to eliminate the requirement of a physician's prescription for a retail sale. This was prompted partly by a desire to release the medical fraternity from the constant pressure for prescriptions as a means of obtaining liquor for beverage purposes. But it was done chiefly to divert the flow of beverage liquor from the secret, subterranean channels, controlled by the bootlegger, into open channels which could be controlled by government, in the interest of moderation and public revenue. Indeed, if the requirement of a prescription had not been eliminated, it is difficult to see how any improvement of the present situation could have been brought about, except the slight amelioration of increasing the amount that could be prescribed by a physician at one time.

Even after the elimination of the prescription, it was urged by some members of the Committee that, out of respect for the Seventh Amendment, all retail sales should be required to be made, ostensibly, for medicinal purposes and that druggists' permits should still be limited to sales for those purposes. Under such a system, the purchaser must, of course, be the sole judge of his medicinal needs.

Alternative
to Seventh
Amendment
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It is a matter of record that sales of liquor on prescription in Kentucky averaged annually about 32,000 gallons during 1931 and 1932. It has been estimated that, during the same years, the average annual sales by moonshiners and bootleggers in Kentucky was between 500,000 and 600,000 gallons. Even if the druggists, released from the requirement of prescriptions, should capture only one-half of this illicit business, they would be selling ten or eleven times as much liquor as they did formerly. It has never been asserted that prescription sales were not sufficient to take care of truly medicinal needs, so that, if the sales by druggists should rise to the figure suggested above (say, a minimum of 332,000 gallons annually), it would be clear that at least 300,000 of these gallons had been purchased for beverage purposes. To represent that a system which produced such a result had been adopted to *prevent* the sale of liquor for beverage purposes, in obedience to the Seventh Amendment, was a pretense which a majority of the Committee were unwilling to make, if there was some other way in which the desired result could be brought about.

Another way was suggested, which had been outlined by Dr. Black, a member of the Committee, in an article which appeared in the January number of the "Kentucky Law Journal," under the title, "Is an Immediate Liquor Program for Kentucky Within the Scope of Constitutional Possibilities?"

This plan is based upon certain legal principles and concepts which need not be explained at length. The gist of it is that, since the Seventh Amendment fixes no penalties for its violation, it requires legislation for its enforcement; that in exercising the police power of the state for this purpose, the General Assembly is at liberty to determine how far it shall be exercised; that, consequently, it may select the practices which are to be penalized, thus allowing other practices to go unpunished; and that it may tax what is unlawful, without authorizing or approving it.

Within these principles it is possible, as the majority of the Committee think, to build up a scheme of taxation and control of retail sales, which makes no pretense of coming within the "medicinal purpose" exception, to which no valid, constitutional objection can be made and which offers an opportunity for a more flexible, and therefor a more effective, control of the retail trade in liquor.

The bill tendered herewith as part of the Committee's report is based upon this plan. It taxes not only the

manufacture of distilled spirits, but also the sale of them, both at wholesale and at retail. On the retail trade particularly, it employs the power of taxation, not merely to raise revenue, but also, and primarily, to restrict the trade in the interest of social welfare. It condemns those practices which are most injurious to such welfare and fixes penalties heavy enough to deter offenses, but not so heavy as to prevent convictions.

This condemnation and these penalties cover many forms of sale, according to persons, places, times and other circumstances; but retail sales which do not come under this condemnation and which are made in sealed containers for off-premises consumption, in connection with some other, *bona fide* and well established business, are not penalized, although all of them are taxed. The result is that such retail sales, to proper persons and at proper times and places, may be made with impunity. In order to restrict the number of places at which such sales are made and to insure that they shall be made only by trustworthy and responsible persons, a tax is laid upon the business large enough to exclude the possibility of its being undertaken by irresponsible and unreliable persons.

There is, perhaps, one feature of the Committee's bill which should be explained more fully. One cause of excessive drinking under prohibition is the impossibility, or perhaps we should say, the difficulty, of having liquor served with meals in hotels, restaurants and clubs. If drinking is to be done at all, the most propitious time to do it is with the evening meal. Wine with dinner or a cocktail or highball just before dinner are things which a great many people like to have and have had throughout national prohibition. At home, they could have them in a normal manner, but when they dined at a club or hotel or restaurant they were forced, unless they did without, either to drink indecorously and uncomfortably in a hotel bed-room or to bring the liquor with them, either from their homes or from a neighboring drug store.

Thus we had the unedifying spectacle of the bulging hip pocket, of the pint under the chair or under the tablecloth, of the arrival of the innocent "set-ups," of the more or less surreptitious production of the bottle from its imperfect concealment and the unscientific concoction of the drinks. And when the time for departure came, everybody was asked to "have another," in order to save the trouble of taking the bottle away. Thus it was that what would have been a pleasant and congenial gather-

ing, if drinks could have been ordered from and served openly by the hotel itself, frequently became a noisy or even rowdy "party."

The Committee has endeavored to discourage bed room drinking and to restore dining room drinking to its former respectability by lifting the penalties for on-premises sales in *bona fide* hotels, restaurants and clubs, upon the fulfillment of certain conditions intended to insure moderation and decorum. The method of limiting the number and guaranteeing the respectability of the places which might claim this immunity is the same as that adopted in the case of package sales, that is, by a tax heavy enough to keep out irresponsible and unreliable institutions.

It seems to your Committee that enough has been said in explanation and justification of its proposal. We recommend the adoption of those proposals, either in the form found in the bill attached hereto or with such changes as the General Assembly may deem wise.

The plan proposed is intended only as an emergency measure. The Committee has not attempted to recommend a permanent plan, such as might be adopted upon the repeal of the Seventh Amendment, for the following reasons:

(a) Because the time was too short to permit the preparation of both plans, with the study and care that the subject deserves, in time to give the present General Assembly an opportunity to consider its recommendations deliberately.

(b) Because there was an obvious advantage in watching the results of liquor control experiments during the next two years, not only in Kentucky, but in other States, before undertaking to draft a permanent plan which could not go into effect until the end of that time.

(c) Because it was thought unlikely that the present General Assembly would take the unusual course of enacting a law, the operation of which must be conditioned on a contingency which could not possibly happen for almost two years and might conceivably not happen at all.

The Committee does, however, strongly recommend that provision be made by the General Assembly for a careful and deliberate study of this whole subject during the interval between its adjournment and the convening of the succeeding General Assembly, to the end that the latter may have the benefit of that study in enacting such laws as may be required by the repeal of the Seventh Amendment, if that should occur. Any sug-

gestion as to the manner of selecting a committee to make this study is outside of our province, but we take the liberty of pointing out the advantage of having on such a committee persons who would probably be members of the General Assembly of 1936 so that the Committee would have spokesmen on the floor of both houses.

The Committee recommends that the present General Assembly propose the repeal of the Seventh Amendment of the Kentucky Constitution, in order that such repeal may be made effective in November, 1935. Kentucky gave a majority of over 152,000 in favor of the repeal of the Eighteenth Amendment and, while it is true that a vote against nation-wide prohibition is not necessarily a vote against state-wide prohibition, yet that large majority seems a certain indication of a prevalent public opinion that absolute prohibition, when applied to so large an area, is not an effective method of promoting temperance. Certainly it is of the utmost importance to have, as promptly as possible, a decision of that question by popular vote.

The Committee also strongly recommends a repeal of the Act of March 19, 1926 (Chapt. 165, Acts of 1926; sects. 4214b-1 to 10, Carroll's Kentucky Statutes, 1930). This levies a tax of fifty cents a pint to be paid by druggists on retail sales of distilled spirits, which is, of course, passed on to the consumer. It has the effect of encouraging bootlegging, not only by giving the bootlegger an advantage over the druggist in the retail price, but also by encouraging unscrupulous druggists to make unrecorded purchases from bootleggers, upon which no tax is paid. It should be repealed.

It is further recommended that the repeal proposal include the restoration and reinstatement in the Constitution of Kentucky of the local option provision now contained in Section 61 thereof.

It is recommended that Sections 2554a-1 to 2554a-47, inclusive, Chapter 81, of Carroll's Kentucky Statutes of 1930, being an Act of March 22, 1922, known as the Rash-Gullion Act, be repealed in its entirety and that a new enforcement act or acts be adopted, whether it be the bill tendered herewith or some other measure.

The bill tendered by the Committee is addressed almost altogether to the regulation of retail sales and the consumption of intoxicating liquors, which the Committee has thought presented the only serious problems. It, however, begs to call attention to the fact that the repeal of the Rash-Gullion Act in its entirety may leave some gaps in the law as to manufacturers, warehouse-

Local Option.

men, wholesalers, etc., which should be filled. The Act of September 26, 1933 (Acts, Special Session 1933, Chapt. 4) deals with this subject but covers only manufacture and sales at wholesale and this should be enlarged so as to provide for the issuance of purchase permits to blenders, rectifiers and wholesalers and restricting sales to holders of such permits and to retailers holding license tax receipts as provided in the Committee's bill. Some of these permits were formerly issued by the National Government but went out with the Eighteenth Amendment.

Your Committee has assumed from the beginning that the principle of local control of the liquor traffic should be continued and it has accordingly recommended that the General Assembly, in submitting the question of repeal of the Seventh Amendment, should expressly preserve the local option provision found in Section 61 of the Constitution. It seem to be the general professional opinion that Section 61 was not repealed by the Seventh Amendment and that consequently the laws adopted for the enforcement of that Section will again become operative upon the repeal of that Amendment. Your Committee, accordingly, has not placed any local option provisions in the bill attached to this report. It recommends, however, that, if any doubt should be entertained upon this legal question, the existing local option laws be re-enacted.

The bill tendered by the Committee does, however, provide that nothing therein shall be construed as affecting local control, whether by local option elections, by taxation or by adopting more stringent regulations than are provided by state law.

Beer and Wines.

The Committee makes no special recommendations as to the regulation and taxation of the manufacture or sale of wines and beers, since this subject is covered by the Act of September 26, 1933 (Acts, Special Session, 1933, Chapt. 5).

Conclusion.

The Committee has not undertaken to draft a complete liquor code. It has addressed itself to what it considered the central problem, that is, the consumption

of liquor for beverage purposes. It is here that the social evils arise and it is here that we have attempted to apply the remedies. We respectfully submit that the control of drinking cannot be successfully attained through a plan to control the taking of medicine. We have made no attempt to disguise our purpose to regulate and control beverage liquor. We have attacked that problem directly. We believe that the measures which we have proposed will go far toward its solution and that they will "stand up" as against constitutional objections.

We have not overlooked the subject of public revenue. The principal source of that revenue is through taxes upon manufacture, determined by the quantity manufactured. This subject has been dealt with in full in the two (Acts of September 26, 1933, Special Session, 1933, Chaps. 4 and 5). So far as distilled spirits are concerned, a tax of two cents per gallon was laid upon all manufacturers after the effective date of the repeal of the Eighteenth Amendment. We accept this as a declaration by the General Assembly of the policy of the State upon this subject. The Minority Bill, tendered with the Minority Report, levies not only this tax but also a tax of ten cents a gallon on the withdrawal of distilled spirits from warehouses. While we cannot claim any special knowledge on this subject, we are inclined to think that this tax is much too high. Undoubtedly it would produce a much larger revenue but the tax will be passed on to the consumer and, we fear, will so increase the price of retail liquor as to bring the bootlegger again into the field. We urge that this consideration be always kept in mind in fixing these taxes.

It is true that the Committee has included in its bill moderate license taxes for manufacturers and wholesale distributors but these were adopted to aid in the regulation of the traffic rather than for purposes of revenue, since it is obvious that the revenue thus produced will be comparatively small.

Respectfully submitted,

RAYMOND A. KENT,
LEONARD B. SHOUSE,
FORREST R. BLACK,
ULIE J. HOWARD,
LAFON ALLEN.

January 27, 1933.

**Minority Report of the
Kentucky Liquor Control Committee.**

*To the Governor and
The General Assembly of the
Commonwealth of Kentucky:*

We, the undersigned Elwood Hamilton and Selden Y. Trimble, a minority of the Liquor Control Committee, heretofore appointed by the Governor, while regretting disagreement with the majority of the Committee, feel impelled to submit this, our minority report.

His Excellency, the Governor, in his letter of appointment, stated:

“Under our State Constitution, I am of the opinion there can be no manufacture, sale or transportation of liquors within the State except for medicinal, scientific and mechanical purposes.”

We concur in the Governor's statement.

Section 226(a) of the State Constitution may be repealed by the people of this Commonwealth, but, until that is done, its provisions bind the General Assembly and the Judiciary. No branch of the Government can legally disregard or ignore it.

“If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned.” Observance of Section 226(a) may be inconvenient, but its provisions are mandatory.

Mr. Trimble favored the re-enactment of the “Rash-Gullion Act” omitting references to the National Prohibition Act, and mitigating the penalties therein defined for its violation but, in a spirit of conciliation, joins Mr. Hamilton in the recommendation of the passage of the Bill submitted with this report. Mr. Hamilton favored the repeal of the Rash-Gullion Act. Mr. Trimble also opposes the repeal of the Seventh Amendment to the Kentucky Constitution, but recommends the submission of a repeal amendment with local option restored.

Mr. Hamilton recommends the submission and the repeal of the Seventh Amendment with local option restored.

The nature of the liquor traffic is so peculiar, its pursuit so nearly universal, its abuses so numerous and flagrant, its evils so pronounced and far-reaching, that its regulation and control have occupied the attention of mankind for almost four centuries, the first regulatory act being passed by the British Parliament in 1552. Prohibition came into existence due to the inefficiency of regulatory and license legislation to remove and prevent the evils of the traffic. Experience has shown that prohibition does not lessen the evils of the liquor traffic and the people must again turn to regulation or unbridled license; the latter is unthinkable. "evils"

The evils accompanying the undue use of alcoholic beverages may not be cured or prevented by legislation; only righteous education and individual self-control will prevent them. Legislation, however, may mitigate them and should be for the benefit of society, not in the interest of those who pursue the traffic. Temperance should be promoted wherever possible by removing the temptation to over-indulgence. The use of beverages, such as beer and wine of lesser alcoholic content, than ardent spirits should be encouraged. To this end, light wines and beer should be defined as non-intoxicating.

Intoxication is a word of very broad meaning. To some it means being under the influence of an intoxicant to such an extent as to render one helpless, while to others it means being only slightly under such influence.

Section 226(a) of the Constitution prohibits "intoxicating liquors." The phrase is not further defined; the Legislature has the power to define it within the limits of the use of the phrase as commonly understood.

It may be said to be "liquor" which contains such proportion of alcohol that it will produce intoxication when imbibed in such quantities as it is practically possible for a man to drink.

We believe within this definition, the Legislature has the power to exclude light wines and beer from Section 226(a) of the Constitution.

It lies within the police power of the State to prohibit the sale of non-intoxicating beverages which contain alcohol. It follows that the Legislature may regulate the traffic in such beverages and to that end may impose license taxes on the manufacture and sale of such beverages and may prohibit the sale thereof except by persons authorized under the law to deal and traffic therein.

In order that the State may first regulate and control the manufacture and sale of all alcoholic liquors

and second, may collect all taxes due or imposed by the State on them, we are herewith making certain recommendations to the Legislature which are fully set forth in a bill attached to this report, and summarized as follows:

1. It is proposed to classify alcoholic beverages into two classes, intoxicating and non-intoxicating.

(a) Beer containing four percent or less of alcohol by weight is defined as non-intoxicating.

(b) Vinous liquor containing 14 percent of alcohol by weight or less is defined as non-intoxicating.

(c) All other spirituous, vinous and malt liquors fit for human consumption are defined as "unlawful" or "intoxicating" liquors.

2. It is proposed to establish permanent liquor control boards.

(a) A state board designated "Kentucky Liquor Control Board" composed of the Attorney General, Chairman of the State Tax Commission, Ex Officio Members, and one member appointed by the Governor who receives an annual salary of \$4,800.00.

(b) A county board designated "County Liquor Control Board" composed of the County Attorney, the Sheriff and County Judge.

(c) A city board designated "City Liquor Control Board" composed of the Mayor, Director of Law and the Director of Safety in cities of first class and the Mayor, City Attorney and Chief of Police in cities of all other classes.

3. It is proposed that the following permits shall be issued:

(1) Brewer's permit; (2) wholesaler's permit; (3) permit to sell wine and beer at retail to be consumed on the premises; (4) permit to sell wine and beer at retail, not to be consumed on the premises; (5) distiller's permit; (6) druggist's permit; (7) rectifier's permit; (8) special permit for physicians, dentists and veterinarians.

(a) The State Board has the express power to determine the number of permits to manufacturers, wholesalers and rectifiers and to whom they may be issued.

(b) The County Board has the express power to determine the number of permits to retailers in the County outside the City and to whom they may be issued and the City Board has the same power as to permits within the City.

No person, corporation or partnership can engage in the business of manufacturing, rectifying, transporting or selling alcoholic beverages without a permit. Adequate penalties are provided for doing business without a permit.

Intoxicating liquors may be sold by a manufacturer to a permitted wholesaler, druggist, or rectifier.

A permitted druggist may sell one pint to any person more than twenty-one years of age, not an habitual drunkard, nor having been convicted of any offense directly or indirectly attributable to the use of intoxicating beverages, for medicinal purposes without a prescription, but only one pint in seven days; on a physician's prescription without limit as to the amount. A physician may prescribe a case of liquor if the patient by reason of location or other handicap is unable to obtain such liquor as needed.

Dentists may administer it for medicinal purposes and veterinarians may use it in the treatment of dumb animals.

4. It is proposed to levy the following permit fees and license taxes in order that the State may obtain adequate revenue from the liquor traffic.

(a) Permit fee for brewer or wine merchant to sell in original packages direct to consumers \$25.00 per month.

(b) For the privilege of manufacturing beer or wine \$500.00 per annum.

(c) For the privilege of selling beer or wine at wholesale, \$100.00 per annum.

(d) For the privilege of selling beer or wine not to be consumed on the premises, \$25.00 per annum, within the limits of a city and \$15.00 per annum outside the limits of a city.

(e) For the privilege of selling beer or wine to be consumed on the premises where sold in a restaurant, hotel, beer garden, or club, \$100.00 per annum in cities of over 100,000 population and \$50.00 per annum in other places.

(f) For the privilege of selling beer or wine upon a railroad car or vessel to be consumed on the premises, \$10.00 per annum for each railroad car, and \$25.00 per annum for each vessel.

(g) For the privilege of manufacturing, storing or transporting spirituous liquors for mechanical, scientific, sacramental or medicinal purposes \$500.00 per annum.

(h) For the privilege of manufacturing, storing or transporting vinous liquors for mechanical, sacramental or medicinal purposes, \$250.00 per annum.

(i) For the privilege of purifying, mixing, blending, or flavoring spirituous liquors for mechanical, scientific, sacramental or medicinal purposes, \$250.00 per annum.

(j) For the privilege of selling at wholesale, spirituous, vinous or blended liquors for mechanical, scientific, sacramental or medicinal purposes, \$200.00 per annum.

(k) For the privilege of selling at retail, spirituous, vinous or blended liquors for mechanical, scientific, sacramental or medicinal purposes, \$100.00 per annum.

5. In addition to the permit fees above enumerated it is proposed:

(a) To levy a license fee of \$1.25 per barrel of thirty-one gallons or fraction thereof on beer manufactured or sold within the state.

(b) On wine, two cents per gallon or fraction thereof.

(c) On distilled spirits stored in a bonded warehouse, two cents per proof gallon on the storage thereof and ten cents per proof gallon when withdrawn from storage.

(d) On purifying, mixing, blending, flavoring or rectifying, three cents per proof gallon or fraction thereof.

The Bill offered with this report doubtless has many imperfections but in our opinion it is in compliance with, and not in defiance of, the State Constitution.

~~We believe the Bill offered by the majority ignores the Constitution and amounts to a nullification thereof.~~

Numerous States have before and since the repeal of the Eighteenth Amendment, appointed commissions to report to Governors and Legislatures, methods for regulating and controlling the liquor traffic. This report and the Bill attached conform to the recommendations of most of the Committees making reports on the subject.

When the people of this Commonwealth vote on the repeal of the Seventh Amendment, they should be advised as to what is to be done about the liquor traffic in the event of repeal and this report and the appended Bill are submitted as the permanent policy of the State following repeal, the only amendments necessary in that event, being the broadening of the field within which ardent spirits could be sold for beverage purposes.

All of which is respectfully submitted.

ELWOOD HAMILTON,
SELDEN Y. TRIMBLE.

The Committee's Bill.

AN ACT to regulate and tax the manufacture and sale of intoxicating liquor and to repeal the Act of March 22nd., 1922, being Chapter 33 of the Acts of the General Assembly of the Commonwealth of Kentucky of the year 1922, entitled "AN ACT to prohibit the manufacture, sale, transportation, possession or other disposition of spirituous, vinous malt or intoxicating liquors, except for sacramental, medicinal, scientific or mechanical purposes", etc. and all other laws or parts of laws insofar as they are in conflict with the provisions hereof.

PREAMBLE.

The General Assembly is confronted with a condition and not a theory; the Seventh Amendment to the state constitution is being violated constantly and with impunity; the people in the November, 1933, election voted to repeal the Eighteenth Amendment by a majority of more than 150,000; the Seventh Amendment cannot be repealed until the November election of 1935; the vote on the repeal of the Eighteenth Amendment indicates a widespread public demand for intoxicating liquor for beverage purposes that will insist upon being supplied; the General Assembly is cognizant of the failure of the Rash-Gullion Act; from its very inception this act was not enforced in the urban centers of the state and if indictments were brought, juries would not convict; further, it provided no revenue from the liquor traffic but, on the contrary, has imposed an additional burden on the taxpayers; the General Assembly realizes that the present legal control of the liquor traffic is hopelessly inadequate and affords an unsurpassed opportunity for the bootlegger; a continuation of the legal *status quo* can only breed further disrespect for law and a further demoralization of a large number of our citizens; the General Assembly, in formulating "appropriate legislation" under the Seventh Amendment, is cognizant of the factual background and of the financial plight of the Commonwealth and intends to establish a system of stricter control of the liquor traffic which at the same time shall become an integral part of a more adequate system of taxation; the General Assembly appreciates the fact that the Seventh Amendment is not self-executing and that it contains no penalties, that, since the source of its legis-

Bill
for
repeal

reasoning

lative power over the liquor traffic is not found in the Seventh Amendment, but in the reserved police power of the State, the General Assembly is not legally obligated to exercise that power to the fullest extent which the amendment might authorize, and that, under the police power, it may select and choose the evils that it thinks most desirable to penalize. Bearing in mind the factual background, it is the deliberate judgment of the General Assembly that this Act constitutes the most effective legislation under the emergency conditions confronting the State.

Now, Therefore, Be it enacted by the General Assembly of the Commonwealth of Kentucky:

ARTICLE I: DEFINITIONS.

SECTION 1. The word "person" shall include any corporation, partnership, association or individual.

SECTION 2. The word "manufacturer" shall mean any person engaged in the business of making, blending or rectifying whisky, brandy, cordials, liquors, wines, beer or any other liquid containing more than 3.2 per centum of alcohol by weight.

SECTION 3. The word "jobber" shall include all persons, not manufacturers, engaged in the business of selling the types of alcoholic products included in the preceding section for resale, and, in the case of resident agents of manufacturers or jobbers, not doing business in the Commonwealth of Kentucky, the term "jobber" shall include such resident agents.

SECTION 4. The words "commission," or "tax commission" refer to the Kentucky State Tax Commission.

SECTION 5. The word "hotel" shall mean any establishment for the accommodation of the public, which has been in existence and operation for not less than one year at the time as of which its standing under this Act is called in question, which is equipped with not less than twenty bed-rooms containing not less than one bed in each such room, with sufficient covering therefor, and which is equipped with a public dining-room and with facilities and equipment for preparing and serving *bona fide* meals, and wherein the average daily receipts from the sale of cooked and prepared foods exceeds the receipts from the sale of alcoholic beverages.

SECTION 6. The word "restaurant" shall mean an establishment, which has been in existence and operation for not less than one year at the time as of which its standing under this Act is called in question, equipped with a public dining-room and with facilities and equipment for preparing and serving *bona fide* meals to the public, wherein the average daily receipts from the sale of cooked or prepared foods shall exceed the receipts from the sale of alcoholic beverages.

SECTION 7. The word "club" shall mean any corporation, lawfully organized, which has been in existence and operation for not less than one year at the time as of which its standing under this Act is called in question, which is the owner, lessee or occupant of premises operated solely for educational, social, fraternal, patriotic, political or athletic purposes, and not for profit, which maintains a dining-room where, in consideration of payment, prepared and cooked food is regularly served, wherein the average daily receipts from sales of food exceed those from the sale of alcoholic beverages, and in which membership entails the prepayment of dues.

SECTION 8. The word "block" shall mean the area on both sides of that portion of a street lying between intersecting streets and extending back, on both sides, half-way to the next parallel street.

ARTICLE II: LICENSE TAXES.

SECTION 9. A license tax for each fiscal year, payable quarterly in advance at the beginning of each period of three months, shall be imposed upon each person selling, in connection with another established business within this state, intoxicating liquor by the package and not to be consumed on the premises. The amount of such annual license tax, according to the location of the establishment in which such sales are made, shall be as follows:

In counties containing a City of the First	
Class	\$750.
In counties containing a City of the Second	
Class	500.
In counties containing a City of the Third	
Class	400.
In all other counties	300.

Any person making such sale not in connection with another established business or without having paid said tax shall be guilty of a misdemeanor and shall be punishable by a fine of \$100. for the first offense and of \$200. for each subsequent offense.

SECTION 10. The sale of intoxicating liquor for consumption on the premises is hereby prohibited. Any person violating this section shall be guilty of a misdemeanor and shall be punishable by a fine of one hundred dollars (\$100.00) for the first offense, and of two hundred dollars (\$200.00) for each subsequent offense:

Provided, However, that any hotel, restaurant or club which shall have paid the quarterly instalment of the annual license tax as hereinafter provided (which exaction of license tax shall not be construed as a grant of privilege), for the period of time in which sales of intoxicating liquor with meals may have been made, shall not, except as to offenses or penalties provided by Article IV of this Act, be subject to any of the penalties of this Act or to any other proceeding for or on account of any sale or sales of intoxicating liquor with meals made by such hotel, restaurant or club during the quarterly period for which such license tax has been paid by it, if such hotel, restaurant or club shall make to the State Tax Commission, on forms to be provided by it, a monthly report under oath, not later than the tenth day of the month following the month in which such sales have been made, showing the gross receipts realized from sales of alcoholic beverages by the glass with meals, together with a detailed statement of all other receipts during such period, accompanied by a payment of a tax of twenty-five dollars (\$25.00) to the State Tax Commission.

The amount of the annual license tax required by this section to be paid by hotels, restaurants and clubs shall be as follows:

In counties containing a City of the First Class	\$750.
In counties containing a City of the Second Class	500.
In counties containing a City of the Third Class	400.
In all other counties	300.

SECTION 11. The State Tax Commission, upon the payment to it of the quarterly license taxes provided in Sections 9 and 10 hereof, shall issue a receipt for each

such payment. Such receipt shall be printed on forms furnished by the State Tax Commission and shall not be of a size smaller than seven by twelve inches. Such receipt shall indicate the time limits of the quarterly period for which the license tax has been paid. No receipt shall be issued for the next quarterly period until the license tax for that period has been paid and the old receipt has been turned in and cancelled; provided that the Commission shall not accept the quarterly installment of license tax nor issue the license tax receipt to any person who, during the preceding quarter, has been convicted of a violation of this Act. All persons paying the license tax must display the receipt in a conspicuous position in their respective places of business. A violation of this section by the taxpayer shall constitute a misdemeanor and subject him to a penalty of \$100.

SECTION 12. An annual license tax of \$500. is hereby imposed on every jobber doing business in Kentucky, which shall be paid on or before the first day of the month following the effective date of this act for the ensuing year and annually thereafter.

ARTICLE III: ADMINISTRATION.

SECTION 13. The administration of this act is vested in the State Tax Commission, which may prescribe forms and promulgate rules and regulations needed for the enforcement of the act. The State Tax Commission shall have power to institute legal proceedings for the purpose of ascertaining the amount of license taxes due and of enforcing the collection thereof with penalties thereon and for the purpose of enjoining the operation of the business of the delinquent taxpayer in conformity with the requirements of this act. The State Tax Commission shall keep a suitable record of all license taxes collected under this act, which record shall include preservation of the canceled receipts. The State Tax Commission, or any representative appointed by it in writing, is hereby authorized to examine the books, records, papers, files, equipment and inventory of all persons subject to the payment of the license tax; to examine witnesses under oath for purposes involving the enforcement of this Act; and to examine the books, records, papers, files, equipment and inventories of manufacturers, jobbers, or carriers for the purpose of determining whether the Act is being violated. The

Commission shall have power to issue subpoenas to require the attendance of witnesses and the production of books and papers, which subpoenas shall be effective in any part of the State. The power provided in this section may be delegated by the Commission to any member or employee thereof. All information obtained by the State Tax Commission, or by an agent thereof, as a result of the reports, investigations, or verifications herein authorized and required to be made shall be confidential, and any person divulging such information, except on the order of a court of competent jurisdiction, or to an officer of the Commonwealth entitled to receive the information in his official capacity, shall be fined not exceeding \$500. The Commission shall make an annual report to the governor and a biennial report to the General Assembly of its activities under this Act.

SECTION 14. Every person subject to the license tax under this Act is hereby required to preserve a written record of daily gross receipts of sales of intoxicating liquor and maintain a file of invoices of intoxicating liquors received for sale and to keep such other records as the Commission may require to facilitate the enforcement of this Act.

ARTICLE IV: PENALTIES.

SECTION 15. It shall be unlawful to sell intoxicating liquors for beverage purposes at the places, on the days, during the hours, to the persons or under the circumstances set out below:

(a) Any person who shall sell, give away, or dispose of intoxicating liquor for beverage purposes to a minor or habitual drunkard or an intoxicated person shall be guilty of a misdemeanor and for the first offense be punishable by a fine of not less than \$100. nor more than \$250. and for the second and subsequent offenses, he shall be guilty of a misdemeanor and punishable by a fine of not less than \$250. nor more than \$500. or by imprisonment in the County jail for not less than six months nor more than one year or both so fined and imprisoned in the discretion of the jury.

(b) Any person who shall sell intoxicating liquor for beverage purposes on Sunday or on election day or between midnight and eight o'clock a. m. on week days shall be guilty of a misdemeanor and for the first offense be punishable by a fine of not less than \$100. nor more than \$250. and for the second or subsequent offenses he

shall be guilty of a misdemeanor and punishable by fine of not less than \$250. and not more than \$500. or by imprisonment in the county jail for not less than ten days nor more than six months or both so fined and imprisoned in the discretion of the jury.

(c) Any person who, within an incorporated city, shall sell intoxicating liquor for beverage purposes either to be consumed on or off the premises from a place of business within the same block in which is located a public school or college; or any person not in an incorporated city who shall sell intoxicating liquor for beverage purposes, either to be consumed on or off the premises from a place of business within 500 feet of a public school or college, shall be guilty of a misdemeanor and for the first offense be punishable by a fine of not less than \$50. nor more than \$250. and for the second or subsequent offenses, he shall be guilty of a misdemeanor and punishable by a fine of not less than \$250. nor more than \$500. or by imprisonment in the county jail for not less than ten days nor more than six months or both so fined and imprisoned in the discretion of the jury.

(d) Any person who shall by himself or his employee or servant, or agent for himself, or any other person, keep or carry around on his person, or in any vehicle or leave in a place for another to secure, any intoxicating liquor for beverage purposes with intent to sell the same in violation of this Act, or who shall, within this State in any manner directly or indirectly, solicit, take or accept any order for the purchase, sale, shipment or delivery of intoxicating liquor for beverage purposes in violation of the requirements of this Act shall be termed "a bootlegger" and shall be guilty of a misdemeanor and shall be fined not less than \$250. nor more than \$500. for the first offense and for the second and subsequent offenses he shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$250. nor more than \$1,000. or to imprisonment in the County jail for not less than thirty days nor more than one year or both so fined and imprisoned in the discretion of the jury.

(e) Any person who shall sell intoxicating liquor for beverage purposes to any person who has been reported to the seller, by the juvenile court, or by any officer acting by its direction, as failing to make a proper provision for his or her family shall be guilty of a misdemeanor and shall be fined not less than \$50. nor more than \$250. or imprisoned not less than ten days nor more than sixty days or both so fined and imprisoned within the discretion of the jury.

(f) Any person who shall sell intoxicating liquor for beverage purposes in a dance hall, pool room, night club, theater, ball grounds, race track or similar place of public resort, other than a hotel, restaurant or club, as hereinbefore defined, shall be guilty of a misdemeanor and shall be fined not less than \$50. nor more than \$250. or imprisoned not less than ten days nor more than sixty days or both so fined and imprisoned within the discretion of the jury.

(g) Any manufacturer or jobber who shall sell or deliver intoxicating liquor within this State to a retailer who does not possess a valid license tax receipt shall be guilty of a misdemeanor and for a first offense shall be fined not less than \$250. nor more than \$1,000., or imprisoned not less than 30 days nor more than 6 months, or both so fined and imprisoned in the discretion of the jury.

SECTION 16. Any person found guilty a second time of any one of the offenses set out in Section 15 hereof where the penalty for a second offense or other subsequent offense is not specifically provided, shall be fined not less than \$500. nor more than \$1,000. or confined in the county jail not less than one month nor more than six months or both so fined and imprisoned within the discretion of the jury.

For a third or any subsequent conviction of the same offense, the person so offending shall be punished by a fine of not less than \$1,000. or confinement in the County jail for not less than one month nor more than twelve months or both so fined and imprisoned in the discretion of the jury.

SECTION 17. It shall be unlawful for any person to buy, bargain, sell, loan, own, have in possession or knowingly transport, an illicit still designed for the unlawful manufacture of intoxicating liquors or any apparatus designed for the unlawful manufacture of spirituous, vinous, malt or intoxicating liquors, and any person or persons convicted for the offenses enumerated in this section shall be fined not less than fifty dollars, nor more than five hundred dollars, or in addition shall be imprisoned in the County jail for not exceeding six months.

Upon a second conviction of any offense enumerated in this section the defendant or defendants, if individuals, shall be confined in the penitentiary for not less than one year, nor more than five years, and for the third and each subsequent conviction of any offense enumerated

in this section, shall be confined in the penitentiary for not less than five years, nor more than ten years.

Upon a second or any subsequent conviction of any corporation under this section, a fine shall be imposed of not less than one thousand dollars, nor more than five thousand dollars, in the discretion of the jury.

SECTION 18. Every person knowingly aiding or abetting any person, firm or corporation in the violation of Section 15 of this act, shall be deemed a principal and punished as such.

SECTION 19. An illicit still or apparatus designed for the unlawful manufacture of intoxicating liquor shall include an outfit or parts of an outfit, commonly used, or intended to be used, in the distillation or manufacture of spirituous, vinous or malt liquors which is not duly registered in the office of a Collector of Internal Revenue for the United States, and the burden of proving that same is so registered shall be on the defendant or defendants under charge.

SECTION 20. All persons who are convicted under this act, where a jail sentence is inflicted as part of the punishment, shall serve out the jail sentence at hard labor, and all fines and costs assessed against any person under this Act, and not paid or replevied, shall be served out by confinement at hard labor at the rate of one day for each dollar of such fines and costs.

SECTION 21. In any prosecution or proceeding for any violation of this Act, the general reputation of the defendant or defendants for moonshining, bootlegging, or being engaged in the illicit manufacture of, or trade in, intoxicating liquors, shall be admissible in evidence against said defendant or defendants.

SECTION 22. On a third conviction for violation of any of the provisions of this Act, except the violation described and penalized in Section 33 of this Act, the court shall require the defendant in addition to the penalty inflicted to execute a bond in a sum not less than \$500. nor more than \$2,500. to be of good behavior for twelve months and not violate any of the laws of Kentucky relative to the selling, possession, transportation or manufacture of intoxicating liquors and if the bond be not executed, the defendant shall be committed to the county jail in default of said bond for a period of ninety days. The order of the trial court requiring the execution of the bond herein provided for shall not be considered a part of the punishment inflicted under this Act, but as a security against future violations of

the provisions of this Act and said order shall not be subject to appeal.

SECTION 23. The court, upon conviction of any defendant for illegal manufacture or sale of intoxicating liquors, shall order the destruction of any illicit stills or apparatus designed for the manufacture of liquor belonging to or under the control of such defendant and may order the copper or other property sold and the proceeds of the sale shall be paid to the county treasurer of the county for the benefit of the road fund.

SECTION 24. Any person who shall in any public place, or in or upon any passenger coach, street car, or in or upon any vehicle commonly used for the transportation of passengers, or in or about any depot, platform, waiting station or room, drink any intoxicating liquor of any kind, or if any person shall be drunk or intoxicated in any public or private road, or in any passenger coach, street car, or other public place or building, or at any public gathering, or if any person shall be drunk or intoxicated, and shall disturb the peace of any person, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment for not less than five days nor more than thirty days, or by both such fine and imprisonment.

SECTION 25. Every railroad conductor is hereby authorized and empowered to exercise in every county in this State, through which the train in charge of such conductor passes, all his common law and statutory powers for the purpose of enforcing the provisions of the last preceding section, and to arrest offenders against any such provisions, and in so doing they shall be considered as acting for the State and not as employees of the railroad company. Arrests for offenses against such provisions may be made by such conductor without warrant, and persons so arrested shall be delivered by him to some justice of the peace, police judge, sheriff, constable or police officer at some station or place within the county in which the offense was committed, for trial as provided by law; provided, that if the train shall have passed from the county in which such offense was committed and for which such arrest shall have been made, then such conductor shall deliver the person so arrested to some officer of another county, and he shall be held and delivered to some officer of the county in which the offense was committed to be there held for trial as pro-

vided by law. When any railroad conductor, who is actually engaged in the discharge of his duty, makes a legal arrest under the provisions of this section, then and in that case the railroad company employing him shall not be liable for damages to the person or persons for such arrest.

SECTION 26. Quarterly courts, and the judges thereof, justices of the peace and police courts, shall have concurrent jurisdiction with the circuit court in the trial of all offenses committed in their respective jurisdictions under the provisions of this Act, where the penalty which may be inflicted does not exceed a fine of three hundred dollars and imprisonment in the county jail not exceeding sixty days, and said courts shall always be open for the trial of such offenses.

ARTICLE V: MISCELLANEOUS PROVISIONS.

SECTION 27: *Emergency Clause*. Whereas the present legal control of the liquor traffic in Kentucky is hopelessly inadequate and affords an unsurpassed opportunity for the bootlegger and, whereas, a continuance of the legal *status quo* can only breed further disrespect for law and a further demoralization of a large part of our citizenry, and in view of the present financial plight of the State, an emergency is declared to exist, and this Act shall become effective on passage and approval of the Governor.

SECTION 28. The provisions of this Act are severable, and if any of its provisions or any penalty provided by this Act shall be held unconstitutional, such provision or the particular penalty held to be invalid, may be rejected without affecting the remainder of the Act or such part of the penalties as are not held to be invalid, and the decisions of the courts shall not affect or impair the remaining provisions of this Act or any of the other penalties anywhere in this Act provided. It is hereby declared as a legislative intent that this Act would have been adopted had not such unconstitutional provisions of such invalid penalties been included therein.

SECTION 29. Nothing in this Act shall be construed to prevent municipal corporations, through their legislative bodies, from taxing the liquor traffic or by way of regulation setting up more stringent standards than are provided by this Act.

Nor shall anything in this Act be construed as preventing the prohibition of the liquor traffic, in whole

or in part, by means of local option elections, as authorized by Section 61 of the Kentucky Constitution, and the laws enacted pursuant thereto.

SECTION 30. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages. And it shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery or rectifying and blending plant, or in any manufacturing, wholesaling or importing interest of any kind, whether within this State or out of it. No license tax payment shall be received from any person so interested nor shall any tax receipt be issued to him.

SECTION 31. No officer or employee of the State Tax Commission who shall be concerned with the administration of the provisions of this Act shall directly or indirectly, individually or as a member of a partnership or as a stockholder of a corporation or other association, have any interest whatsoever in the manufacture, distribution, transportation, importation or sale of alcoholic beverages, or in any enterprise or industry dealing with alcoholic beverages; nor shall any such person receive any commission or profit or have any interest whatsoever in any purchase or sale of alcoholic beverages; *provided, however*, that nothing herein contained shall prevent any such person from purchasing or possessing for consumption and not for resale any alcoholic beverages.

Any person who shall violate any of the provisions of this section may be conditionally suspended or dismissed by the Commission.

SECTION 32. The State Tax Commission, acting through its Distilled Spirits Permit Department, provided for in an Act approved September 26, 1933, entitled "An Act relating to revenue and taxation; providing a license or excise tax on the business or occupation of manufacturing distilled spirits, known as whis-

key or brandy, or other species of such double stamp spirits in this State," etc., is hereby empowered to make such further rules and regulations and to issue such permits with reference to the manufacture, transportation and sale, by manufacturers and jobbers within this state, of distilled spirits and other intoxicating liquor, and for the export thereof from this state and the import thereof into this state, as may be necessary or proper under the provisions of this Act.

Minority Bill.

AN ACT to regulate the manufacture, sale, transportation, possession or other disposition of spirituous, vinous, malt and similar liquors and to regulate the manufacture, sale transportation or other disposition of spirituous, vinous, malt or intoxicating liquors for sacramental, medicinal scientific or mechanical purposes; to regulate the manufacture, transportation, sale, ownership or possession of apparatus designed for the manufacture of spirituous, vinous, malt or intoxicating liquors in the Commonwealth of Kentucky; to regulate the manufacture, sale and transportation of alcohol for non-beverage purposes and prohibiting the ownership or interest either directly or indirectly by officers or employees of this Commonwealth of any property used for the manufacture, sale or transportation of alcoholic liquors.

Also providing a licence or excise tax on the business or occupation of manufacturing distilled spirits known as whiskey or brandy or other species of such double stamp spirits in this state and/or the business or occupation of a warehouseman storing such distilled spirits providing for permits and for a liquor control board and also for the manufacture, sale and distribution of beer and wines and imposing taxes thereon for a distribution of such taxes and permit fees; providing penalties for violation of this act and declaring an emergency to exist; repealing all of Chapter 33, Act of March 22, 1922; Sections 2554a-1, 2554a-2, 2554a-3, 2554a-4, 2554a-5, 2554a-6, 2554a-7, 2554a-8, 2554a-9, 2554a-10, 2554a-11, 2554a-12, 2554a-13, 2554a-14, 2554a-15, 2554a-16, 2554a-17, 2554a-18, 2554a-19, 2554a-20, 2554a-21, 2554a-22, 2554a-23, 2554a-24, 2554a-25, 2554a-26, 2554a-27, 2554a-28, 2554a-29, 2554a-30, 2554a-31, 2554a-32, 2554a-33, 2554a-34, 2554a-35, 2554a-36, 2554a-37, 2554a-38, 2554a-39, 2554a-40, 2554a-41, 2554a-42, 2554a-43, 2554a-44, 2554a-45, 2554a-46 2554a-47, Carrolls Kentucky Statutes 1930 Edition Chapter 4 of the Acts of the General Assembly Extraordinary Session, 1933, Chapter 5 of the Acts of the General Assembly Extraordinary Session, 1933, and appropriating money for the enforcement of this Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART I.

SECTION I. This Act may be cited as the "STATE LIQUOR CONTROL ACT OF KENTUCKY."

SECTION II. The following words and phrases used in this Act shall take the following interpretations:

(1) "Person" includes an individual, corporation, co-partnership, society or joint stock company.

(2) "Malt liquors" shall be construed to mean any beverage containing not more than four (4%) per centum of alcohol by weight obtained by the alcoholic fermentation of an infusion or decoction of barley, malt or other cereal and hops and water. "Illegal malt liquors" shall be those described above containing more than four (4%) per centum of alcohol by weight.

(3) "Vinous liquors" shall be construed to mean any beverage containing more than fourteen percent of alcohol by weight attained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar including fortified wine such as port, sherry and champagne. "Illegal vinous liquors" shall be those described above containing more than fourteen percent of alcohol by weight.

(4) "Spirituous liquors" shall be construed to mean any beverage containing more than fourteen per cent of alcohol by weight obtained by distillation mixed with water and other substances in solution and including among other things brandy, rum, whisky, gin and all other beverages containing more than fourteen per cent of alcohol by weight, and which are not included within the definitions contained in sub-paragraphs 2 and 3 hereof.

"Unlawful spirituous liquors" for beverage purposes shall include all liquors not described and defined in this paragraph.

(5) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale.

(6) "Wholesale sale" or "sale at wholesale" means a sale to any person for purposes of resale.

(7) "Owner" means any person who sells at retail any beverage for the sale of which a permit is required under the provisions of this Act.

(8) "Wholesaler" means any person who sells at wholesale any beverage for the sale of which a permit is required under the provisions of this Act.

(9) "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee. "To sell" includes to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell.

(10) "State board" means the state alcoholic beverage control board provided for in this Act.

(11) "County board" means a county alcoholic beverage control board provided for in this Act.

(12) "City board" means the city alcoholic beverage board provided for in this Act.

(13) "Convicted" and "conviction" include and mean a finding of guilt resulting from a plea of guilty, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncing of judgment or the suspension thereof.

(14) "Restaurant" shall mean only a room regularly and in a *bona fide* manner used and kept open for the serving of meals to guests for compensation, which has suitable table accommodations for at least twenty guests therein at one and the same time, and a kitchen connected therewith containing conveniences for cooking sufficient to provide meals in a *bona fide* manner for twenty guests at one and the same time. Table accommodations, for the purposes of this definition, shall not include seats or chairs arranged at a counter, bar, or similar contrivance. The term "guest" within the meaning of this definition as to required accommodations is a person who, during the hours when meals are regularly served therein, goes to a restaurant for the purpose of obtaining, and actually orders and obtains at such time, in good faith, a meal therein.

(15) "Beer garden" shall include a yard or open space used as a restaurant, or adjoining a restaurant and owned and operated by the same person as such restaurant.

(16) The term "hotel" shall mean a building regularly used and kept open as such in a *bona fide* manner for the feeding and lodging of guests, where all who conduct themselves properly and who are able and ready to pay for such services are received if there be accommodations for them. The term "hotel" shall also include an apartment hotel wherein apartments are

rented for fixed periods of time either furnished or unfurnished, to the occupants of which the keeper of such hotel regularly supplies food in a restaurant in such hotel.

(17) "Brewery" means and includes any place or premises where any beer is manufactured for sale; and all offices, granaries, mashrooms, cooling-rooms, vaults, yards, cellars and storerooms connected therewith or where any part of the process of manufacture of beer is carried on, or where any apparatus connected with such manufacture is kept or used, or where any of the products of brewing or fermentation are stored or kept, shall be deemed to be included in and to form part of the brewery to which they are attached or are appurtenant.

(18) "Brewer" means any person who owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.

(19) "Distillery" means any establishment where spirituous liquors are manufactured.

(20) "Distiller" means any person who owns, occupies, carries on, works or conducts any distillery either by himself or by his agent.

(21) "Winery" means any establishment where vinous liquors are manufactured.

(22) "Wine maker" means any person who owns, occupies, carries on, works or conducts any winery either by himself or by his agent.

(23) "Club" means an organization of persons incorporated pursuant to the provisions of the membership corporations law or the benevolent orders law which is the owner, lessee or occupant of an establishment operated solely for a recreational, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain, and includes the establishment so operated.

(24) A "member of a club" is a person who, whether as a charter member or admitted in agreement with the by-laws of the club, has become a *bona fide* member thereof, who maintains his membership by the payment of his annual dues in a *bona fide* manner in accordance with such by-laws and whose name and address is entered in the list of members.

(25) "Vehicle" shall include any device in, upon or by which any person or property is or may be transported or drawn upon a public highway, road, street or public place, except devices used exclusively on stationary rails or tracks.

(26) "Traffic in" includes to manufacture and sell at wholesale or retail.

(27) "Building containing permitted premises" shall include the permitted premises and also any part of the building in which such premises is contained and any part of any other building connected with such building by direct access or by a common entrance. It shall also include the building in which cooking or preparation of food for any beer garden is carried on.

(28) "Premises permitted" or "permitted premises" means that part of a building for which a permit has been issued.

(29) "Permit" means a permit issued pursuant to this Act.

(30) "Alcoholic beverage" includes all distilled or rectified spirits, wine, fermented and malt liquors.

(31) "Permittee" means any person holding a permit.

(32) "Masculine" includes the feminine unless otherwise specifically provided.

(33) "Grocery store" means any retail establishment where food-stuffs are regularly and customarily sold in a *bona fide* manner for consumption off the premises.

(34) "Dentist" means a person duly licensed to practice dentistry under the laws of the State of Kentucky.

(35) "Druggist" means a duly licensed pharmacist under the laws of the State of Kentucky.

(36) "Physician" means a person duly licensed to practice medicine in the State of Kentucky.

(37) "Prescription" means a memorandum in the form prescribed by the regulations made under the authority of this Act signed by a physician and given by him to a patient for the obtaining of spirituous liquors pursuant to this Act for use for medicinal purposes.

(38) "Veterinary" means a person duly licensed to practice the art of treating and healing injuries and diseases of domestic animals.

PART II.

SECTION I. There shall be a "Kentucky Liquor Control Board" composed of the Attorney General of the Commonwealth of Kentucky, the Chairman of the State Tax Commission of Kentucky, ex officio members, and one member appointed by the Governor of the Commonwealth and such board shall have the powers and duties herein specified.

SECTION II. The appointee member of the Board shall be not less than thirty years of age, shall be Chairman of the Board, shall be appointed for a term of four years and receive a salary of \$4,800.00 per annum payable in monthly installments out of any moneys in the Treasury not otherwise appropriated and before entering upon the discharge of his duties, the appointee member shall take the Constitutional oath of office and give bond for the faithful performance of the duties of his office in the penal sum of \$25,000.00 which bond shall be approved by the Attorney General and recorded in his office.

SECTION III. The principal offices of the Board shall be at the State Capitol.

SECTION IV. The Board shall have authority to employ a secretary who shall devote his whole time and attention to the business of the Board and shall follow no other occupation. The Secretary shall receive an annual salary of \$2,400.00, payable in monthly installments to be paid as salaries of other state officials.

SECTION V. The provisions of this Act shall be enforced by the Board, any deputy or employee, members of the State Tax Commission, or any officer or employee thereof, any County or City Board or any officer or employee thereof. All reports required under said Act shall be made to the Board at Frankfort, Kentucky.

SECTION VI. No member of the Board, its Secretary, or any officer or employee, deputy or assistant engaged in the enforcement of this Act or authorized to enforce this Act, shall have any interest, direct or indirect, either proprietary or by means of any loan, mortgage or lien or in any other manner, in or on any premises where alcoholic beverages or medicines are manufactured or sold, nor shall he have any interest direct or indirect in any business wholly or partially devoted to the manufacture or sale of alcoholic beverages or medicines, or own any stock in any corporation which has any interest, proprietary or otherwise, direct or indirect, in any premises where alcoholic beverages or medicines are manufactured or sold or in any business wholly or partially devoted to the manufacture or sale of alcoholic beverage or medicines. Any one violating any provision of this Section forfeit his office or be removed therefrom.

SECTION VII. The Board shall have the following powers, functions and duties:

(1) To grant and revoke for cause permits issued under the provisions of this Act.

(2) To fix in its discretion the number of breweries, wineries, distilleries and wholesalers of beer, wine and spirituous liquors to be permitted within the state, and the location of the same provided, however, that said board shall recognize as valid for their term all permits or licenses in existence at the time this Act becomes a law, issued under authority of Chapter 4 or 5 of the Acts of the General Assembly, Extraordinary Session, 1933.

(3) To fix by rule the standards of manufacture in order to insure the use of proper ingredients and methods in the manufacture of beer, wines and spirituous liquors, to be sold in the state.

(4) To grant or refuse permits to owners for the sale at retail of beer, wine and spirituous liquors within the state in the manner provided hereinafter.

(5) To keep records in proper form to be prescribed by the Board of (a) all permits issued and all permits revoked under the provisions of this Act; (b) Records should be so kept in form and in substance as to provide ready information as to the identity of all permits including the names of stockholders and directors of corporate permits and also the location of all permitted premises.

(6) To adopt rules and regulations for the supervision and control of the manufacture and sale of beer, wine and spirituous liquors throughout the state not inconsistent with law.

(7) To carry on by its agents or employes inspections of any premises where beer, wine or spirituous liquors are manufactured for sale or sold.

(8) To prescribe forms of applications for permits under this Act and of all periodic reports deemed necessary to be made by any permittee.

(9) To make an annual report to the governor and the legislature of its activities for the past year. This report shall include statistics as to the amount of beer, wine and spirituous liquors manufactured in the State of Kentucky and the disposition thereof; the increase or decrease in its consumption over the preceding year; the amount of taxes and permit fees collected; and such other information as it deems advisable.

(10) To examine or cause to be examined under oath any permittee and to examine or cause to be examined his books and records; to hear testimony and take proof material for its information; to administer oaths; and for any such purpose to issue a subpoena or subpoenas

to require the attendance of witnesses and the production of books, which shall be effective in any part of the state. The powers provided in this subdivision may be delegated by the board to any member or employee thereof.

SECTION VIII. Each member of the Board and its Secretary shall, before entering upon his duties, take and file an oath of office in the same form and manner as prescribed by law for public officers.

PART III.

SECTION I. The County Attorney, the Sheriff and the County Judge of each County shall constitute the "County Liquor Control Board" and such Board shall have the powers and duties herein specified. The County Clerk of the County shall be Secretary of the County Board.

SECTION II. Every County Board shall, with respect to the County over which it has jurisdiction, have the following powers, functions and duties:

(1) To recommend to the State Board, the granting or revocation of permits effective within the County to persons for the sale of beer, wine and spirituous liquors at retail not to be consumed upon the premises.

(2) To recommend to the State Board the granting or revocation of permits for the sale of beer, wine or spirituous liquors at retail to be consumed on the premises.

(3) To fix the hours not inconsistent with law during which beer, wine or spirituous liquors may be sold at retail to be consumed upon or off the premises within the county.

(4) To examine or cause to be examined under oath any holder of a permit to sell beer, wine or spirituous liquors at retail and to examine or cause to be examined the books and records of any such holder; to hear testimony and take proof material for its information and for any such purpose to issue subpoena or subpoenas which shall be effective in any part of the State.

SECTION III. All of the disqualifications and provisions contained in this Act relative to members and employees of the State Board shall apply with full force and effect to members and employees of any County Board.

SECTION IV. A County Board having jurisdiction shall be a party to all actions and proceedings affecting

in any manner the issue or revocation of permits; to all injunction proceedings against permit owners pursuant to this Act and to all other civil actions and proceedings which in any manner affect the enjoyment of a permit issued by such County Board.

PART IV.

SECTION I. The Mayor, the Director of Law and the Directors of Safety, in cities of the first class, and the Mayor, the City Attorney and the Chief of Police in cities of other classes shall constitute the "City Liquor Control Board" and such Board shall have the powers and duties herein specified. The Clerk of the Board of Aldermen, City Council or Board of Trustees shall be the Secretary of the City Board.

SECTION II. Except as otherwise specifically provided, the City Board shall exercise the same powers, functions and duties as a County Board in a County, outside of the city limits, and any provision of law referring to County Boards functioning pursuant to this Act and the members and employees of such Boards shall be deemed to refer also to the City Board with respect to any power, function or duty to be exercised within the city or town and to its members and employees, it being the purpose of this Act to authorize city and town boards to exercise all the functions and powers conferred on County Boards within the town or city limits and the County Board to exercise the powers conferred on it only outside the city limits and within the county limits.

PART V.

SECTION I. The following restrictions upon and regulation of the manufacture, possession or sale of malt liquors and vinous liquors for beverage or sacramental purposes and the manufacture, possession or sale of spirituous liquors for mechanical, scientific or medicinal purposes are hereby established for the reason that the manufacture, possession or sale of said liquors for said purposes may be conducive to the manufacture, possession, distribution or sale of unauthorized alcoholic beverages and therefore the provisions of this Act are enacted as a safeguard to temperance and in order to promote obedience to the law and more effectively to prevent the unlawful manufacture and sale of beverages now prohibited by the Constitution of this State.

It is hereby declared to be the public policy of the State that the number of permits in this State to traffic in malt, vinous or spirituous liquors should be restricted and the State Board empowered to determine whether public convenience and advantage will be promoted by issuing such permits, by increasing or decreasing the number thereof and in order to further carry out the policy hereinbefore declared, the number of such permits shall be restricted. For such purposes, the State Board is hereby given discretion to determine the number of permits, the location thereof and the persons to whom they shall be issued subject to judicial review as hereinafter provided.

It is the purpose of this Act to permit the sale of malt or vinous liquors for beverage purposes, subject to the provisions thereof, of the highest alcoholic content permitted under the Constitution of this State and if the court or courts of this State should adjudge that the alcoholic content of the liquors referred to herein as fixed under this Act is in excess of that permitted under the Constitution, then this Act shall be construed as to such liquors as to only authorize the manufacture and sale within the limits of the Constitution.

It is declared by the Legislature to be the public policy of this State that beer, containing not more than four per cent of alcohol by weight is non-intoxicating and wine containing not more than fourteen per cent of alcohol by weight is non-intoxicating in fact.

SECTION II. No malt, vinous or spirituous liquors shall be manufactured in this State for storage, sale or sold at retail within the State after this Act becomes effective, without a permit therefor issued by the State Board as hereinafter provided. No person shall sell illegal malt, vinous or spirituous liquors in this State.

There shall be eight kinds of permits, each of which shall be distinctive in color and design so as to be readily distinguishable from each other, to-wit: (1) brewer's permit; (2) wholesaler's permit; (3) permit to sell beer and wine at retail to be consumed on the premises; (4) permit to sell beer and wine at retail not to be consumed on the premises; (5) distiller's permit; (6) druggist's permit and (7) rectifier's permit; and (8) special permits to physicians, dentists and veterinarians.

SECTION III. (1) Any person may apply to the State Board for a permit to manufacture beer and wine within this State for sale. Such application shall be in writing and verified, and shall set forth in detail such in-

formation concerning the applicant for said permit and the premises to be used therefor as the State Board shall require. Said application shall be accompanied by a certified check, or cash, or postal money order for the amount required by this Act for such permit. If the State Board shall deny the application it shall return the fee to the applicant. If the State Board shall grant the application, it shall issue a permit in such form as shall be determined by rules. Such permit shall contain a description of the premises; and in form and in substance shall be a permit to the person therein specifically designated to manufacture beer or wine in the premises therein specifically permitted. The State Board shall have absolute discretion as to the number of such permits and as to the location of the premises permitted.

(2) No manufacturer, after this Act becomes effective, shall sell or contract to sell any beer or wine to any wholesaler or any owner who is not duly permitted under this Act to sell beer or wine at wholesale or retail at the time of such contract and sale.

(3) A permitted manufacturer may under such rules as may be adopted by the State Board, sell at retail beer or wine in bulk by the keg, cask or barrel for consumption, and not for re-sale, at a barbecue, picnic, outing or other similar out-door gathering at which more than fifty individuals are assembled.

(4) A permitted manufacturer may apply to the State Board for a permit to sell beer or wine at retail for consumption on the premises in a beer garden or restaurant owned by him and conducted and operated by him in or adjacent to the brewery or winery for which he is permitted. All of the provisions of this Act relative to permits to sell beer or wine at retail for consumption on the premises shall so far as is practicable, apply thereto.

(5) Except as specifically provided in this Act, no manufacturer of wine or beer shall sell any of either at retail.

SECTION IV. (1) The State Board may, in its discretion, and upon such terms and conditions as it may, by rule, prescribe, issue to a permitted brewer or wine merchant, upon application therefor, a permit authorizing him to sell beer or wine at retail to be delivered by such brewer or wine merchant to a person for consumption in his home.

(2) Such application shall be in writing and verified, and shall set forth in detail such information concerning the applicant, the necessity for the permit and the

probable extent of its use and such other information as the Board shall by rules require. Such application shall be accompanied by a certified check, or cash, or postal money order for the amount required by this section of such permit. If the Board shall deny the application, it shall return the fee to the applicant. If the Board shall grant the application, it shall issue a permit in such form as shall be determined by rules to be adopted by the Board.

(3) Such a permit and the exercise of the privilege given thereunder may be subjected by the Board to such requirements and restrictions as it may deem necessary to impose by rules.

(4) For the exercise of the privilege granted by such permit, there is assessed a fee to be paid by the person enjoying the same, in addition to the regular fee for a brewer's permit or a wine merchant's permit provided for in this Act, the sum of Twenty-five (\$25.00) Dollars per month.

SECTION V. (1) A person other than a manufacturer of beer or wine may apply to the State Board for a permit to sell beer or wine at wholesale. Such application shall be in writing and shall set forth in detail such information concerning the applicant for said permit and the premises to be permitted as the State Board may require and shall be accompanied by a certified check, or cash, or postal money order for the amount required by this Act for such permit. If the State Board shall deny the application it shall return the fee to the applicant. If the State Board shall grant the application, it shall issue a permit in such form as shall be determined by the rules of such board. Such permits shall contain a description of the premises permitted; and in form and in substance shall be a permit to the person therein specifically designated to sell beer or wine at wholesale in the premises therein specifically permitted.

A person holding a manufacturer's permit need not obtain a wholesaler's permit in order to sell at wholesale beer or wine manufactured by him. No person, after this Act becomes effective, other than a person holding a manufacturer's permit selling his own beer or wine, shall sell beer or wine at wholesale in this State without a permit issued pursuant to this section. A wholesaler's permit shall authorize the holder thereof to sell beer or wine at retail to be delivered by such wholesaler to a person for consumption in his home. No wholesaler after this Act becomes effective shall sell

or agree to sell any beer or wine to an owner who is not duly permitted to sell at retail at the time of such agreement and sale.

SECTION VI. (1) Any person may make an application to the County Board or City Board of the County or City in which the premises to be permitted are located for a permit to sell beer or wine at retail not to be consumed upon the premises where sold. Such application shall be in such form and contain such information as shall be required by rules of the State Board; and be accompanied by a certified check, or postal money order, or cash, in the amount required by this Act for such permit.

(2) If it shall approve such application it shall indorse its approval thereon in writing, signed by members of the County or City Board or by their agent duly authorized so to sign, by a certificate signed by the members of the County or City Board and filed in the office of the State Board. It shall thereupon forward such application, together with the fee therefor, to the State Board, which may thereupon issue such permit accordingly, or which may refuse to so issue such permit. In the event that the State Board issues such permit it shall forward it to the applicant and shall notify the County Board or City Board in such form as the State Board may by rule prescribe. In the event that the State Board refuses to issue such permit it shall state and file in its principal office its reasons therefor and shall return such application to the applicant together with the fee therefor and shall notify the County or City Board of its action in such form as the State Board may by rule prescribe.

(3) If the County or City Board shall disapprove such application for a permit it shall indorse thereupon its disapproval thereof together with a statement of its reasons therefor, signed in the same manner as provided in subdivision two of this section, and shall notify the applicant of such action. Such applicant may thereupon apply to the State Board for a review of such action of the County or City Board, in a manner to be prescribed by rules of the State Board. A hearing, upon notice to the County or City Board and to the applicant, shall thereupon be held by the State Board or by one of its members in a manner to be prescribed in its rules; and on such hearing proof may be taken by oral testimony or by affidavit relative thereto. After such hearing, if the State Board concur in the disapproval by the County or City Board, it shall indorse such application

accordingly and shall return it, together with the fee therefor to the applicant, and shall send notice to the County or City Board of its action in such form as the State Board may by rule prescribe. If the State Board does not concur in the disapproval by the County or City Board it may nevertheless grant such application and issue such permit in the manner prescribed in subdivision two of this section.

(4) In the event that the County or City Board is not unanimous in its recommendation as to such application, each member of such Board shall indorse thereon his approval or disapproval of such application as the case may be, together with his reasons therefor. The County or City Board shall thereupon forward such application together with the fee therefor to the State Board. If the applicant requests it in a manner to be prescribed by rules of the State Board, the State Board shall thereupon proceed in the same manner as provided in subdivision three of this section in a case where an application for a permit has been disapproved by the County or City Board and forwarded to the State Board.

(5) No such permit shall be issued, however, to any person for any premises other than a grocery store or drug store.

(6) Such permit shall in form and substance be a permit to the person specifically designated therein to sell beer or wine in the premises specifically permitted at retail not to be consumed upon the premises; and shall describe in sufficient detail the premises permitted. It shall authorize the sale of beer or wine in bottles or in cases or in any other receptacle, at retail, to be consumed off the premises permitted.

(7) No person shall after this Act becomes effective sell any beer or wine at retail to be consumed off the premises unless a permit to do so has been issued to him pursuant to this section; provided, however, that a sheriff, marshal or constable may sell such beer or wine on a sale or an execution issued pursuant to law.

SECTION VII. (1) Any person may make an application to the County or City Board of the County or City in which the premises to be permitted are located for a permit to sell beer or wine at retail to be consumed upon the premises. Such application shall be in such form and shall contain such information as shall be required by rules of the State Board; and shall be accompanied by a certified check or postal money order or cash in the amount required by this Act for such permit. All of the provisions contained in subdivisions two, three

and four of the preceding section shall apply to an application made for a permit under this section.

(2) Such permit shall in form and substance be a permit to the person specifically designated therein to sell beer or wine in the premises specifically permitted at retail to be consumed upon the premises and shall describe in sufficient detail the premises permitted. Such permit shall also be deemed to include a permit to sell beer or wine at retail to be consumed off the premises.

(3) No permit to sell beer or wine to be consumed on the premises shall be issued to any person for any premises, except a *bona fide* hotel, restaurant, beer-garden, club, railroad car or vessel, or other places in the discretion of the State Board.

(4) A club permitted under this section may sell beer or wine only to its members and to their guests accompanying them.

(5) It shall be unlawful for any person to sell beer or wine after this Act becomes effective to be consumed on the premises unless such person shall be permitted to sell beer or wine as provided in this Act.

(6) No beer or wine shall be sold to be consumed at a bar, counter, or other similar contrivance except under such rules as the State Board may prescribe.

(7) Nothing in this Act contained, however, shall be construed to require that any food be sold or purchased with beer or wine.

SECTION VIII. (1) Any person may apply to the State Board for a permit to manufacture, sell, transport and store spirituous or vinous liquors for mechanical, scientific, sacramental or medicinal purposes. Such application shall be in writing and verified and shall set forth in detail such information concerning the applicant for said permit and the premises to be used therefor as the State Board shall require. Said application shall be accompanied by a certified check or cash or postal money order for the amount required by this Act for such permit. If the Board shall deny the application, it shall return the fee to the applicant. If the Board shall grant the application, it shall issue a permit in such form as shall be determined by rules. Such permit shall contain a description of the premises to be used by the applicant and in form and in substance shall be a permit to the person therein specifically designated to manufacture, store, sell or transport spirituous or vinous liquors in or from the premises therein specifical-

ly authorized. The State Board shall have absolute discretion as to the location of the premises to be used.

(2) No distiller shall after this Act becomes effective, sell or contract to sell any spirituous liquors referred to herein to any wholesaler or to any other person who is not duly authorized under this Act, to receive, possess, transport or sell same.

(3) A distiller may, under such rules as may be adopted by the State Board, sell, deliver or transport only to (a) druggists, (b) wholesalers, (c) rectifiers, (d) export out of the State for mechanical scientific, sacramental or medicinal purposes, (e) on a physician's prescription.

(4) Any person may apply to the State Board for a permit for purifying, mixing, blending or flavoring of spirituous liquors or the bottling, warehousing or other handling or distribution of rectified distilled spirits. Such application shall be in writing and verified and shall set forth in detail such information concerning the applicant for said permit and the premises to be used therefor as the State Board shall require. Said application shall be accompanied by a certified check, or cash, or postal money order for the amount required by this Act for such permit. If the State Board shall deny the application it shall return the fee to the applicant. If the State Board shall grant the application, it shall issue a permit in such form as shall be determined by rules. Such permit shall contain a description of the premises to be used by the applicant and in form and substance shall be a permit to the person therein specifically designated to purify, mix, blend or flavor spirituous or vinous liquors, or to bottle, warehouse or otherwise handle or distribute rectified distilled spirits in the premises therein specifically authorized. The State Board shall have absolute discretion as to the location of the premises to be used.

(5) Any rectifier may, under such rules as may be adopted by the State Board, sell, deliver, or transport only to (a) druggists, (b) wholesalers, (c) other rectifiers, (d) export out of the State for mechanical, scientific, sacramental or medicinal purposes (e) on a physician's prescription.

(6) Any person, other than a distiller or rectifier, may apply to the State Board for a permit to sell spirituous or vinous liquors for mechanical, scientific, sacramental or medicinal purposes at wholesale. Such application shall be in writing and shall set forth in detail such information concerning the applicant for said per-

mit and the premises to be used by the applicant as the State Board may require; and shall be accompanied by a certified check, or cash, or postal money order for the amount required by this Act for such permit. If the State Board shall deny the application it shall return the fee to the applicant and if the State Board shall grant the application, it shall issue a permit in such form as shall be determined by the rules of the Board. Such permit shall contain a description of the premises permitted and in form and substance shall be a permit to the person therein specifically designated to sell spirituous or vinous liquors for mechanical, scientific, sacramental or medicinal purposes; to druggists holding permits or to export same from the Commonwealth of Kentucky to be used for mechanical, scientific, sacramental or medicinal purposes.

A person holding a distiller's or rectifier's permit, need not obtain a wholesaler's permit in order to sell at wholesale spirituous or vinous liquors. No person, after this Act becomes effective, other than a person holding a distiller's, rectifier's or wholesaler's permit shall sell spirituous or vinous liquors at wholesale for mechanical, scientific, sacramental or medicinal purposes, and no wholesaler, holding a permit, shall sell to or buy from others unless they hold permits, but such wholesalers may export from or import into this State, such liquors for mechanical, scientific, sacramental or medicinal purposes under rules and regulations promulgated by the State Board.

(7) Any druggist may make application to the County or City Board of the county or city in which his premises are located for a permit to sell spirituous or vinous liquors for mechanical, scientific, sacramental or medicinal purposes, not to be consumed on the premises where sold. Such application and permit shall be considered, approved or disapproved by the said County, City or State Board in the same form or manner as wine or beer permits, except that the State Board shall adopt separate rules and regulations for the consideration and disposition of permits for druggists and such permits, if granted, shall only authorize the permittee to own, hold, possess, sell and transport spirituous or vinous liquors for mechanical, scientific, sacramental or medicinal purposes.

SECTION IX. Any person more than twenty-one years of age, not an habitual drunkard or having been convicted of any offense directly or indirectly attributable

to the use of intoxicating beverages, may, if he deems necessary for his health, purchase from any druggist holding a permit from the State Board one pint of spirituous or vinous liquor, but no person shall purchase more than one pint within seven days and the State Board shall adopt rules and regulations concerning and directing what records a druggist shall keep of such sales and the manner and method of reporting such sales to the State Board and of obtaining and recording such facts on which such sale is made.

SECTION X. (1) Any physician who deems spirituous, vinous or malt liquor necessary for the health of a patient of his when he has seen or visited professionally may give to such patient a prescription therefor in the prescribed form, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician shall administer only such liquor as was purchased by him under special permit pursuant to this Act, and may charge for the liquor so administered; but no prescription shall be given nor shall liquor be administered by a physician except to a *bona fide* patient in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary.

(2) Every physician who gives any prescription or administers any liquor in evasion or violation of this Act, or who gives to or writes for any person a prescription for or including liquor for the purpose of enabling or assisting any person to evade any of the provisions of this Act, or for the purpose of enabling or assisting any person to obtain liquor to be used as a beverage, or to be sold or disposed of in any manner in violation of the provisions of this Act, shall be guilty of an offense against this Act.

SECTION XI. Any dentist who deems it necessary that any patient being then under treatment by him should be supplied with spirituous, vinous or malt liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor purchased by him under special permit pursuant to this Act, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to a *bona fide* patient in case of actual need, and every dentist who administers liquor in evasion or violation of this Act shall be guilty of an offense against this Act.

SECTION XII. Any veterinary who deems it necessary may in the course of his practice administer or cause to be administered liquor to any dumb animal, and for that purpose the veterinary shall administer or cause to be administered liquor purchased by him under special permit pursuant to this Act, and may charge for the liquor so administered or caused to be administered; but no veterinary shall himself consume, nor shall he give to or permit any person to consume as a beverage any liquor so purchased, and every veterinary who evades or violates or suffers or permits any evasion of this section shall be guilty of an offense against this Act.

SECTION XIII. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill-health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this Act for that purpose, administer liquor purchased by him under his special permit, to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medical purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to *bona fide* patients or inmates of the institution of which he is in charge and in cases of actual need, and every person in charge of an institution who administers liquor in evasion or violation of this Act shall be guilty of an offense against this Act.

SECTION XIV. All special permits referred to in the foregoing sections shall be in such form and issued under such regulations as the State Board may prescribe.

SECTION XV. Any physician who deems liquor necessary for the health of a patient may prescribe for said patient an unbroken case of spirituous liquor and such prescription may be filled by a druggist, distiller, rectifier or wholesaler, provided, however, no such prescription shall be issued by a physician or filled by a druggist, distiller, rectifier or wholesaler unless the patient by reason of location or other handicap, is unable to obtain such liquor as needed.

SECTION XVI. In addition to such other information as the State Board may determine shall be furnished in any application for permit under this Act, the following information shall be given under oath:

(1) The name, age and residence of each applicant and, if there be more than one and they be partners, the

partnership name and the age and residence of the several persons so applying, and the facts as to his or their citizenship;

(2) The name and residence of each person interested, or to become interested, in the business of any permittee for which the application is made, together with the nature of such interests; and if such applicant be a corporation, the application shall set forth the name of the corporation, the names of its directors or other governing body, the names of its officers and stockholders if it be a stock corporation, and the State under the laws of which it is organized;

(3) The premises to be permitted stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the locality thereof. The applicant shall also state the nature of his interest in the premises; and the name of any other person, either as principal or associate, interested with the applicant either in the premises or in the business to be permitted;

(4) A statement that such applicant has not been convicted of a felony; and has not had a permit issued to him under this Act revoked for cause;

(5) A statement that no previous permit issued to the premises to be permitted has been revoked for cause.

If there be any change, after the granting of a permit, in any of the facts required to be set forth in such application, notice in verified form, of such change shall be filed with the appropriate Board within ten days thereafter. Failure to do so shall, if such Board find that it was wilful and deliberate, be cause for revocation of the permit. In giving any notice, or taking any action in reference to a permittee or permitted premises, the appropriate Board may rely upon the information furnished in such application and in any supplemental statement connected therewith, and such information may be presumed by such Board to be correct, and shall be binding upon a permittee or permitted premises as if correct. All information required to be furnished in such applications or supplemental statement shall be deemed material in any prosecution for perjury.

SECTION XVII. A permit issued to any person, pursuant to this section, for any premises shall not be transferable to any other person or to any other premises or to any other part of the building containing the permitted premises. It shall be available only to the person therein specified, and only for the premises permitted and no other. For the purposes of this section each rail-

road car and each vessel shall be deemed premises separately to be permitted.

SECTION XVIII. No permit shall be transferable or assignable.

(1) No permit shall be pledged or deposited as collateral security for any loan or upon any other condition; and any such pledge or deposit and any contract providing therefor shall be void.

(2) Permits shall be valid for a period of one year from date of issue, except as provided in Part V, Section IV, Subsection 4, and shall contain, in addition to any further information or material to be prescribed by rule and regulation of the State Board, the following:

(a) The name of the person to whom the permit is issued.

(b) The kind of permit and what kind of traffic in malt, vinous or spirituous liquors is thereby permitted.

(c) A description by street and number or otherwise of the permitted premises.

(d) A statement in substance that such permit shall not be deemed a property or vested right and that it may be revoked at any time pursuant to law.

(e) The name and address of the owner of the premises. Upon a change in such ownership the permittee or the new owner may file notice to that effect in writing with the appropriate Board on forms to be provided by the State Board for such purpose.

(3) There shall be printed and furnished by the State Board to each permittee a statement of the causes for which permits may be revoked under law. Such statement shall be prepared by the State Board and delivered to the permittee with his permit or as soon thereafter as may be practicable. Any amendments therein shall also be sent by the State Board to all permittees as soon as may be practicable after such amendment. Failure to send such statement or changes therein, or failure to receive the same, or any misstatement or error contained in such statement or amendments, shall, however, not be an excuse or justification for any violation of law, or prevent or remit or decrease any penalty or forfeiture therefor.

(4) It shall be the duty of every person procuring a permit under this Act or a renewal thereof to publish a notice, in a form to be prescribed by the State Board, to the effect that such permit has been issued and stating the name of the permittee and the location of the premises permitted, once a week for two successive weeks

in a daily or weekly newspaper printed or published in the county in which such premises are located.

SECTION XIX. (1) For the privilege of manufacturing beer or wine for sale there is assessed a permit fee to be paid by every person engaged in such business of Five Hundred (\$500.00) Dollars per year.

(2) For the privilege of selling beer and wine at wholesale there is assessed a permit fee to be paid by every person engaged in such business the sum of One Hundred (\$100.00) Dollars per year.

(3) For the privilege of selling beer and wine, not to be consumed on the premises where sold, there is assessed a permit fee to be paid for each such place where such traffic is carried on, of Twenty-five (\$25.00) Dollars per year; provided, however, that for premises situated outside a city, such fee shall be fifteen dollars per year.

(4) For the privilege of selling beer or wine to be consumed upon the premises where sold in a restaurant, hotel, beer garden or club, there is assessed a permit fee to be paid for each such place where such business is carried on, of One Hundred (\$100.00) Dollars annually in cities having a population of one hundred thousand or over, and fifty dollars annually in all other places to which this Act is applicable, provided, however, that where a hotel situated in a town or village remains open only within the period commencing May first and ending October thirty-first of any one year such hotel may be granted a summer permit effective only for such period of time, for which a permit fee of twenty-five dollars shall be paid.

(5) For the privilege of selling beer or wine upon any railroad car, or vessel within this State, to be drunk on such car or on any car connected therewith, or on such vessel, there is hereby assessed a permit fee of twenty-five dollars per year for each vessel, and ten dollars per year for each railroad car permitted.

(6) For the privilege of manufacturing, storing or transporting spirituous liquors for mechanical, scientific, sacramental or medicinal purposes there is assessed a permit fee to be paid for each such place where such business is carried on, the sum of five hundred dollars annually.

(7) For the privilege of manufacturing, storing or transporting vinous liquors for mechanical, scientific, sacramental or medicinal purposes, there is assessed a permit fee to be paid for each such place where such business is carried on, the sum of two hundred and fifty dollars annually.

(8) For the privilege of purifying, mixing, blending, or flavoring, of spirituous liquors for mechanical, scientific, sacramental or medicinal purposes, there is assessed a permit fee to be paid for each such place where such business is carried on the sum of two hundred and fifty dollars, annually.

(9) For the privilege of selling at wholesale spirituous, vinous or blended liquors, for mechanical, scientific, sacramental or medicinal purposes, there is assessed a permit fee to be paid for each such place where such business is carried on, the sum of two hundred dollars annually.

(10) For the privilege of selling at retail spirituous, vinous or blended liquors for mechanical, scientific, sacramental or medicinal purposes, there is assessed a permit fee to be paid for each such place where such business is carried on, the sum of one hundred dollars annually.

(11) In addition to the permit fee provided for herein, a license tax of one dollar and twenty-five cents a barrel of thirty-one gallons and a like or proportional rate per gallon or fractional part thereof on malt liquors sold in any other container of more or less than thirty-one gallons, is hereby levied upon the sale or distribution by gift of malt liquors. The said tax shall be paid by the manufacturer or brewer if he is in the State, or, if not, by the brewer's agent or wholesaler, if he be in the State, or, if neither of those just mentioned be in the State, then by the retailer, provided, however, that any malt liquors on which taxes have been paid under the provisions of Chapter 5 of the Acts of the General Assembly, Extraordinary Session, 1933, shall not again be taxed under this Act.

(12) In addition to the permit fee provided for herein, a license tax of two cents per wine gallon or fraction thereof is hereby levied upon the sale or distribution by gift or sale of vinous liquors. The said tax shall be paid by the manufacturer if he is in the State or if not by the manufacturer's agent or wholesaler, if he be in the State or if neither of these just mentioned be in the State, then by the retailer, provided, however, that any vinous liquors on which taxes have been paid under the provisions of Chapter 5 of the Acts of the General Assembly, Extraordinary Session, 1933, shall not again be taxed under this Act.

(13) In addition to the permit fee provided for herein, a license tax of two cents per proof gallon or fraction thereof is hereby levied upon the distillation and

storage in a bonded warehouse of spirituous liquors, and a license fee of ten cents per proof gallon or fraction thereof is hereby levied upon the withdrawal thereof, and a license fee of ten cents per proof gallon or fraction thereof is hereby levied upon spirituous liquor brought into the State for storage or sale.

The said tax shall be paid by the manufacturer or distiller if he is in the State, or, if not, by the manufacturer's or distiller's agent, if he is in the State, or, if neither of those first mentioned be in the State, then by the retailer.

(14) In addition to the permit fee provided for here- in a license fee of three cents per proof gallon or fraction thereof is hereby levied upon the purifying, mixing, blending or flavoring of spirituous liquors. The said tax shall be paid by the rectifier if he is in the State or, if not, by the rectifier's agent, if he is in the State, or, if neither of these first mentioned be in the State, then by the retailer.

(15) All license taxes provided and levied under this Act shall be due and payable on the tenth day of each month succeeding the time when the act is done requiring a license and it shall be the duty of the licensee or the person required to pay said license tax to make a report giving such facts and in such form as the State Board shall by rule require and all payments therefor shall first be made to the State Board and it shall on the day of receipt thereof cover the same through the Auditor of Public Accounts into the State Treasury and all fees for permits shall be likewise paid to the State Board and likewise covered by it into the State Treasury.

SECTION XX. All revenues derived from the operation of this Act after collected and recorded by the Board for license or permit fees shall be covered through the Auditor of Public Accounts into the State Treasury and credited to the general expenditure fund and used to match funds provided by the Government of the United States for the relief of the poor and needy in the Commonwealth of Kentucky, to be spent at the discretion and under the supervision of the Governor of the Commonwealth. When this is done, one-half of said revenue is to be used for the retirement of State warrants, and the other half held to remain in the general fund for such uses as may be authorized by law.

SECTION XXI. (1) Each permit shall be issued for a permit year expiring on the thirtieth day of June following the date of its issuance and the proportionate

part of the permit fee prescribed therefor by the preceding section of this Act shall be paid in advance at the time the application therefor shall be made as provided by this Act.

(2) Each permit issued pursuant to this Act may be renewed upon application therefor by the permittee and payment of the annual fee for such permit. In case of application for renewal, the State Board may dispense with the requirement of such statements as it deems unnecessary in view of those contained in the application made for the original permit. The State Board shall make rules regarding applications for renewal of permits and the time when such applications shall be made.

(3) All permits or license fees shall attach to and operate as a lien on the property on and in the permitted premises or elsewhere, belonging to the person from whom such fees are due.

(4) When application for any permit is made after the first of July in any year, the permit fees therefor for the balance of the permit year, shall be in proportion as the remainder of such year bears to the whole year, except that it shall in no case be for less than one-half of such year, and the said amount shall attach and operate as a lien as aforesaid at the time such permit is issued.

SECTION XXII. *Bonds of permittees.* The State Board may require the permittees described in this Act to file with such Board a solvent bond to the people of the State of Kentucky in such penal sum as the Board may by rule prescribe, conditioned that such permittee will not suffer or permit any violation of the provisions of this Act or any Act amendatory thereof or supplemental thereto; and that all fines and penalties which shall accrue, during the time the permit shall be in effect will be paid, together with all costs taxed or allowed in any action or proceeding brought or instituted for a violation of any of the provisions of this Act. A suit to recover on any bond which may be required to be filed by the provisions of this Act may be brought by the State Board or on relation of any party aggrieved, in a court of competent jurisdiction and in the event that the obligor named in such bond has violated any of the conditions of such bond, recovery for the penal sum of such bond may be had in favor of the people of the State.

SECTION XXIII. No person hereafter described in this section shall receive a permit:

- (1) A person who has been convicted of a felony.
- (2) A person under the age of twenty-one.
- (3) A person who is not a citizen of the United States.
- (4) A co-partnership, unless one or more of the members of such co-partnership owning at least one-half interest in the business thereof shall be a citizen of the United States.

(5) A person who shall have had his permit issued under this Act revoked for cause, or who has been convicted of a violation of this Act until the expiration of two years from the date of such revocation or conviction.

(6) A corporation or co-partnership, if an officer or member thereof has been convicted of a violation of this Act or has had a permit issued under this Act revoked for cause, until two years from the date of such conviction or revocation.

SECTION XXIV. Where a permit for any premises permitted has been revoked, no permit shall be thereafter issued for a period of two years after such revocation, for such permitted premises or for any part of the building containing such permitted premises.

SECTION XXV. Any permit issued pursuant to this Act may be revoked for cause, and must be revoked for the following causes:

(1) Conviction of the permittee or his agent or employee for selling any illegal beverages on the premises permitted.

(2) For making any false, material statement in an application for a permit.

(3) If, within a period of two years, there shall have been two convictions for any violation of this Act by a permittee; or two convictions of any of his clerks, agents, employees or servants of any violation of this Act on the premises permitted.

(4) For transferring, assigning or hypothecating a permit.

(5) Violation of the provisions of Section XXXI of this Act shall cause a forfeiture of the permit of all parties to the violation.

(6) For selling or agreeing to sell any malt, spirituous or vinous liquors to a wholesaler or owner who is not permitted at the time of the agreement and sale.

(7) Where a hotel, restaurant or club ceases to be a *bona fide* hotel, restaurant or club in the judgment of the State Board.

(8) For failure or default of a permittee to pay any license or permit tax or any part thereof, and/or penalties imposed by this Act and for a violation of any rule or regulation of the State Board in pursuance thereof.

SECTION XXVI. Permits may be revoked in the manner prescribed in this Act by a County Board, City Board or by the State Board.

(1) A County or City Board may, on its own initiative or on complaint of any person, and after a hearing to be held in the manner and on such notice as may be prescribed by rules of the State Board, revoke a permit to sell malt, vinous or spirituous liquors, at retail. Notice of such revocation shall be in such form as may be prescribed by rules of the State Board and shall be filed in the office of the State Board. No permit, however, to sell at retail issued without the affirmative approval of the County or City Board shall be revoked by a County or City Board.

(2) A permit to sell at retail may be revoked by the State Board on its own initiative or on complaint of a County or City Board or any person, after a hearing at which the permittee and the County Board of the county or the City Board of the county or city in which the permitted premises are located shall be given an opportunity to be heard in such manner and upon such notice as may be prescribed by rules of the State Board.

(3) A manufacturer's permit or a wholesaler's permit may be revoked by the State Board after a hearing held in a manner to be determined by the State Board.

SECTION XXVII. The following actions by the State Board or by a County or City Board may be reviewed by appeal to the Circuit Court of the county if it be the action of a County or City Board in the county where the Board is located, and by an appeal to the Franklin Circuit Court if it be the action of the State Board. Such appeal shall be filed within ten days after the order of the Board complained of and may be prosecuted by any person interested therein.

An appeal shall be taken by filing with the Clerk of the Circuit Court a complete transcript of all the evidence heard and orders entered by the Board affected. No new evidence shall be heard by the court, and its judgment may be appealed to the Court of Appeals of Kentucky as in other cases but the judgment of the Circuit Court shall not be superseded. The Board affected shall be given ten days' notice of the hearing by the Circuit

Court and it shall be heard by the Circuit Court as promptly as may be done.

(1) The refusal by the State Board to issue a permit recommended by a County or City Board.

(2) The issuance of a permit by the State Board contrary to the recommendation of a County or City Board.

(3) The issuance of a permit by the State Board where the recommendation of a County or City Board was not unanimous.

(4) The revocation of a permit by the State Board.

(5) The revocation of a permit by a County or City Board.

SECTION XXVIII. Within three days after a permit shall have been revoked, notice thereof shall be given to the permittee by mailing such notice addressed to him at the premises permitted. Notice shall also be mailed to the owner of the premises permitted. The holder of such permit shall thereupon surrender same to the State Board. The mailing thereof by the permittee to the State Board at Frankfort by registered mail or insured parcel post shall be deemed sufficient compliance with this provision. The State Board, immediately upon giving notice of revocation, shall serve a written notice thereof upon the Chief of Police or chief police officer of the city or town in which the premises for which the revoked permit was issued is situated, or upon the Sheriff of the county in case the permit was issued for premises situated outside of a city or town. This notice shall include a statement of the number of such permit, the name and place of residence of the holder thereof, the location of the permitted premises, and the date when such permit was revoked.

In case such permit be not forthwith surrendered, the State Board shall issue a written demand for the surrender of such permit and deliver said demand to the Sheriff of the county in which the permitted premises are located, or to any special agent of the State Board, and said Sheriff or special agent shall immediately take possession of such permit and return the same to the State Board.

SECTION XXIX. The State Board may adopt rules and regulations covering the hours in which malt, vinous or spirituous liquors may be sold and may prohibit the sale thereof on legal holidays, election days and Sundays, provided, however, the rules and regulations of the

Board in this respect shall not thereby conflict with the ordinances of any city or town.

SECTION XXX. The State Board may adopt rules and regulations covering the transportation of malt, vinous or spirituous liquors in this State.

SECTION XXXI. It shall be unlawful for a manufacturer to—

(a) be interested directly or indirectly in any premises where malt, vinous or spirituous liquors are sold at retail, or in any business devoted wholly or partially to the sale of such liquors at retail, by stock ownership, interlocking directors, mortgage or lien on any personal or real property or any other means:

(b) make any loan to any owner;

(c) enter into a contract with an owner whereby the owner agrees to confine his sales to the products manufactured by one manufacturer. Such contract shall be void.

(1) Any lien, mortgage or other interest or estate, however, now held by a manufacturer on or in the personal or real property of an owner, which mortgage, lien, interest or estate was acquired on or before December thirty-first, nineteen hundred and thirty-three shall not be included within the provisions of this section. The burden of establishing the time of the accrual of the interest, comprehended by this subdivision shall be upon the person who claims to be entitled to the protection and exemption afforded hereby.

SECTION XXXII. If a corporation or co-partnership holding a permit under this Act shall be dissolved, or if a receiver or assignee for the benefit of creditors be appointed therefor, or if a receiver or assignee for the benefit of creditors or a committee of the property of an individual holding a permit be appointed during the time for which such permit was granted, or if a person holding a permit shall die during the term for which such permit was given, such corporation, co-partnership, receiver or assignee, or the administrator or executor of the estate of such individual, or a committee of the property of a person adjudged to be incompetent, may continue to carry on such business upon such premises for the balance of the term for which such permit fee was paid, with the same right and subject to the same restrictions and liabilities as if he had been the original applicant for and the original holder of such permit providing the approval of the State Board shall

be first obtained. Before continuing such business, such receiver, assignee, or individual, or committee, shall file a statement setting forth in such form and substance as the State Board may prescribe by rule and regulation the facts and circumstances by which they have succeeded to the rights of the original committee. The State Board may, in its discretion, permit the continuance of such business or may refuse to do so. In the event that the Board determines to permit the continuance of the business, the permit shall be submitted to the State Board and shall have written or stamped across the face of the same, and signed by the State Board, the words "(here insert the name of the person) is permitted to manufacture or sell (as the case may be) malt, vinous or spirituous liquors, as (here insert the representative capacity, whether as assignee, receiver, executor, administrator or otherwise) of the original permittee for the unexpired term." For each such indorsement a fee of five dollars shall be paid to the State Board by the applicant, which shall be paid into the same fund as other permit fees herein provided.

SECTION XXXIII. Before commencing or doing any business for the time for which a permit has been issued said permit shall be inclosed in a suitable wood or metal frame having a clear glass space and a substantial wood or metal back so that the whole of said permit may be seen therein, and shall be posted up and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same. It shall be unlawful for any person holding a permit to post such permit or to permit such permit to be posted upon premises other than the premises permitted, or upon premises where traffic in beer, wine or liquor, is being carried on by any person other than the permittee, or knowingly to deface, destroy or alter any such permit in any respect. Whenever a permit shall be lost or destroyed without fault on the part of the permittee or his agents or employees, a duplicate permit in lieu thereof may be issued by the State Board in its discretion and in accordance with its rules and regulations or payment of a fee of \$5.00.

SECTION XXXIV. If any person shall manufacture, possess, store or traffic in malt, vinous or spirituous liquors in this State without obtaining the appropriate permit therefor, or shall manufacture, possess, store or traffic in such liquors contrary to any provision of

this Act or otherwise unlawfully, or shall manufacture, possess, store or traffic in illegal liquors, the State Board, County Board, City Board or any taxpayer residing in the county in which such acts are being committed, may present a verified petition to a Judge of the Circuit Court in which such county is situated, for an order enjoining such person from carrying on such business. Such petition shall state the facts upon which such application is based. Upon the presentation of the petition the court shall grant an order requiring such person to appear before such court in such judicial district on the day specified therein, not more than ten days after the granting thereof, to show cause why such person should not be permanently enjoined from carrying on such business, or why such person should not be enjoined from carrying on such business contrary to the provisions of this Act. A copy of such petition and order shall be served upon the person, in the manner directed by such order, not less than three days before the return day thereof. On the day specified in such order the court before whom the same is returnable shall hear the proofs of the parties and may, if deemed necessary or proper, take testimony in relation to the allegations of the petition. If the court is satisfied that such person has unlawfully manufactured, possessed or stored malt, vinous or spirituous liquors without having obtained a permit or contrary to the provisions of this Act, or has trafficked in such illegal liquors, an order shall be granted enjoining such person from thereafter carrying on such business. If, after the entry of such an order in the Circuit Court Clerk's office of the county in which the principal place of business of the corporation or co-partnership is located, or in which the individual so enjoined resides or conducts such business, and the service of a copy thereof upon such person, or such substituted service as the court may direct, such person shall, in violation of such order, manufacture, possess, store or sell such illegal liquor, such manufacture, possession, storing or sale shall be deemed a contempt of court and be punishable in the manner provided by the judiciary law. Costs upon the application for such injunction may be awarded in favor of and against the parties thereto in such sums as in the discretion of the court before whom the petition is heard may seem proper.

SECTION XXXV. The State Board shall be made a party to all actions and proceedings relative to issuance or revocation of permits; to all injunction proceedings,

and to all other civil actions or proceedings which in any manner affect the enjoyment of the privileges or the operation of the restrictions provided for in this Act.

SECTION XXXVI. Any person who after this Act becomes effective manufactures for sale, or sells, malt, vinous or spirituous liquors, without having an appropriate permit therefor, or whose permit has been revoked or cancelled, or who manufactures for sale or sells illegal liquor, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars or by imprisonment in a county jail for a term of not more than six months or both.

(1) Any person who shall make any false statement in the application for a permit under this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than two hundred dollars, or by imprisonment in a county jail for a term of not more than six months or both.

SECTION XXXVII. The violation by any person of any rules of the State Board shall be a misdemeanor and upon conviction thereof such person shall be fined fifty dollars or imprisoned in the county jail sixty days or both so fined and imprisoned.

SECTION XXXVIII. The provisions of this Act are severable and if any of its provisions or any penalty provided by this Act shall be held unconstitutional, such provision or the particular penalty held to be invalid, may be rejected without affecting the remainder of the Act or such part of the penalties as are not held to be invalid, and the decisions of the courts shall not affect or impair the remaining provisions of this Act or any of the other penalties anywhere in this Act provided. It is hereby declared as a legislative intent that this Act would have been adopted had not such unconstitutional provisions of such invalid penalties been included therein.

SECTION XXXIX. It shall be unlawful for any person to buy, bargain, sell, loan, own, have in possession or knowingly transport, an illicit still designated for the unlawful manufacture of intoxicating liquors or any apparatus designed for the unlawful manufacture of spirituous, vinous, malt or intoxicating liquors, and any person or persons convicted for the offenses enumerated in this section shall be fined not less than fifty dollars, nor more than five hundred dollars, and in addition shall

be imprisoned in the county jail for not exceeding six months.

Upon a second conviction of any offense enumerated in this section the defendant or defendants, if persons, shall be confined in the penitentiary for not less than one year, nor more than five years, and for the third and each subsequent conviction of any offense enumerated in this section, the person or persons shall be confined in the penitentiary for not less than five years, nor more than ten years.

Upon a second or any subsequent conviction of any corporation under this section, a fine shall be imposed of not less than one thousand dollars, nor more than five thousand dollars, in the discretion of the jury.

An illicit still or apparatus designed for the manufacture of liquor under this Act shall include an outfit or parts of an outfit, commonly used, or intended to be used, in the distillation of spirituous, vinous or malt liquors which is not at the time of the trial duly registered in the office of a collector of internal revenue for the United States, and the burden of proving that same is so registered shall be on the defendant or defendants under charge.

SECTION XL. No witness before a State, County or City Board, a Grand Jury, Court of Inquiry or on a trial for any violation of this Act, shall be allowed to refuse to answer any question, because the answer will incriminate him but his evidence shall not be used against him in any subsequent proceedings except on trial for false swearing and such witness shall not be prosecuted for any offense disclosed in such testimony other than perjury.

SECTION XLI. Every person knowingly aiding or abetting any person, firm or corporation in the violation of any of the provisions of this Act, shall be deemed a principal and punished as such.

SECTION XLII. No property rights shall exist in any liquor or property designed for the manufacture of liquor unlawfully obtained, possessed, held or used in violation of this Act.

SECTION XLIII. No person or persons, company or corporation, shall possess or have in possession, any spirituous, vinous or malt liquors unless same have been lawfully acquired and are intended to be used lawfully, the burden of proving that same have been lawfully acquired and are intended to be used lawfully shall be upon

the defendants or defendant, provided, however, nothing in this section shall be construed as to make it unlawful to possess liquors in one's private dwelling where the same is occupied and used by him as his dwelling only and such liquors are not held by him for sale or sold by him.

SECTION XLIV. It shall be unlawful for any person to be intoxicated in any public place, highway, street, on or about the vehicle of any common carrier; or to disturb the peace and any person thus offending shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment for not less than five days nor more than thirty or by both said fine and imprisonment.

SECTION XLV. The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this Act:

(1) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.

(2) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, national formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(3) Patented, patent and proprietary medicines that are unfit for use for beverage purposes.

(4) Toilet, medicinal and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(5) Flavoring extracts and syrups that are unfit for use as a beverage or for intoxicating beverage purposes.

(6) Vinegar and preserved sweet cider.

(7) Wine for sacramental purposes.

(8) Alcohol medicated according to such formulas as will render it unfit for beverage purposes and which is to be sold for legitimate external use.

(9) Alcohol for mechanical and scientific purposes if unfit for a beverage.

(10) Any person who manufactures, purchases or possesses any of the articles mentioned in this section, or preparations fit for beverage purposes which are authorized to be manufactured, which may be used in the manufacture of other preparations compounded in accordance with formula prescribed by the United States pharmacopoeia, national formulary or the Amer-

ican Institute of Homeopathy, which preparations when so manufactured are unfit for use for beverage purposes, or in the manufacture of patented, patent and proprietary or other medicines, or for physicians' prescriptions, which are unfit for use for beverage purposes, may purchase and possess liquors for that purpose, and shall keep such records as are required by the State Board.

No such manufacturer shall sell, use or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any syrup, extract or the articles named in paragraphs 2, 3 and 4 of this section which may be used for beverage purposes than the quantity necessary for the extraction or solution of the elements mentioned therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs 1, 2, 3 and 4 of this section for beverage purposes or any extract or syrup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purpose, shall be subject to the penalties provided in this act.

SECTION XLVI. Alcohol for mechanical and scientific purposes and wine for sacramental purposes, may be secured from persons authorized to manufacture and sell same under the provisions of this Act.

SECTION XLVII. All forms, rules and regulations required under this Act shall be printed by the Public Printer at the expense of the Commonwealth and there is hereby appropriated out of the State Treasury to be paid out of the funds collected under the provisions of this Act the sum of \$50,000.00 annually to be used for stationery, printing, postage, traveling and incidental expenses of the members of the Boards, officers or employees enforcing the provisions of this Act. No expenditure shall be made except on the written authorization of the Chairman of the State Board and the Auditor of Public Accounts shall not draw his warrant on the State Treasurer for the payment thereof until a sworn itemized statement of the purpose of said expenditure is filed by the payee and the account therefor approved by the Chairman of the State Board.

SECTION XLVIII. No suit shall be maintained in any court to restrain or delay the collection or payment of

any fee or tax levied by this Act. The aggrieved taxpayer or permittee shall pay the tax or fee as and when required and may at any time within two years from the date of such payment sue the Commonwealth through its agent, the Auditor of Public Accounts, in an action at law in any court, State or Federal, otherwise having jurisdiction of the parties and subject matter for the recovery of the tax or fee paid with legal interest thereon from the date of payment. If it is finally determined that said tax or fee or any part thereof was wrongfully collected, for any reason, it shall be the duty of the Auditor of Public Accounts to issue his warrant on the Treasurer of the Commonwealth of Kentucky for the amount of such tax or fee so adjudged to have been wrongfully collected, together with legal interest thereon. The Treasurer shall pay the same at once out of the general expenditure fund of the State in preference to other warrants or claims against the Commonwealth. A separate suit need not be filed for each individual payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made.

SECTION XLIX. All of Chapter 33, Act of March 22, 1922; Sections 2554a-1, 2554a-2, 2554a-3, 2554a-4, 2554a-5, 2554a-6, 2554a-7, 2554a-8, 2554a-9, 2554a-10, 2554a-11, 2554a-12, 2554a-13, 2554a-14, 2554a-15, 2554a-16, 2554a-17, 2554a-18, 2554a-19, 2554a-20, 2554a-21, 2554a-22, 2554a-23, 2554a-24, 2554a-25, 2554a-26, 2554a-27, 2554a-28, 2554a-29, 2554a-30, 2554a-31, 2554a-32, 2554a-33, 2554a-34, 2554a-35, 2554a-36, 2554a-37, 2554a-38, 2554a-39, 2554a-40, 2554a-41, 2554a-42, 2554a-43, 2554a-44, 2554a-45, 2554a-46, 2554a-47, Carroll's Kentucky Statutes, 1930 Edition, Chapter 4 of the Acts of the General Assembly, Extraordinary Session 1933, Chapter 5 of the Acts of the General Assembly, Extraordinary Session 1933, are hereby repealed.

SECTION L. WHEREAS, the law heretofore existing in this Commonwealth controlling the liquor traffic was largely based on the Eighteenth Amendment to the Federal Constitution and on the Volstead National Prohibition Act, and

WHEREAS, the Eighteenth Amendment and the Volstead Act have been repealed, and

WHEREAS, there are no general laws in Kentucky effectively controlling and taxing the liquor traffic, and

WHEREAS, the present State Revenue does not meet the immediate needs for the maintenance and development of the State Government and its agencies, particularly the relief of the poor and destitute, and the State's credit is threatened with impairment, an emergency is declared to exist and this Act shall become a law and be effective on its passage and approval by the Governor.



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